(28,759)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 300.

ALBERT HANSON LUMBER COMPANY, LTD., PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

	Original.	Print.
Record from the district court of the United States for the eastern district of Louisiana	b	1
Caption	1	2
Petition for expropriation and order thereon	2	2
Notation as to exhibits to petition	8	6
Exceptions of vagueness and no cause of action	9	7
Exceptions of misjoinder	10	8
Order overruling exceptions	11	8
Motion of defendant to strike parts of petition and order denying	12	9
Answer	13	10
Hearing in part and continuance	24	16
Further hearing and continuance	25	17
Further hearing and verdict	26	18
Order granting leave to defendant to file motion for new trial	27	19

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1922.

	Original.	Print.
Motion for new trial	28	19
Order overruling motion for new trial	33	22
Order fixing delays for filing bills of exception	34	23
Judgment	35	23
Petition for writ of error and order allowing same	41	27
Assignment of errors	43	28
Bond on writ of error	47	30
Bill of exceptions No. 1	49	32
No. 2	56	36
No. 3	61	39
No. 4	64	41
No. 5	66	42
No. 6	68	43
Offers of evidence by plaintiff and objections thereto	73	46
Order overruling objections and exceptions to ruling	75	47
Exhibits—Resolution of directors of Lumber Company, September 29, 1913	76	48
Letter, Schulz to Lawless, June 8, 1916	80	50
Letter, Lawless to Schulz, June 10, 1916	81	50
Letter, Lumber Company to Major E. J. Dent, April 16, 1919	82	51
Admission as to authorization to institute expropriation proceedings	84	52
Testimony of Major E. J. Dent	85	52
Exhibits—Letter, Dent to Alpha, June 3, 1920	87	53
Proposed regulations to govern navigation	88	54
Testimony of Walter Y. Kempner	97	59
N. G. Huth	127	78
Walter Y. Kempner (recalled)	131	78
Clarence Gardner	138	81
W. B. Smith, Jr	156	93
T. C. Lawless	170	101
Emmet Alpha	183	108
Exhibits—Letter, Alpha to U. S. Attorney, April 23, 1920	185	109
Letter, U. S. Attorney to Alpha, May 22, 1920	189	112
Telegram, Alpha to U. S. Attorney, February 20, 1920	195	115
Letter, Alpha to U. S. Attorney, February 20, 1920	196	115
Letter, U. S. Attorney to Alpha, February 25, 1920	197	116
Testimony of Eddie Boudreaux	206	121
A. T. Peterman	217	128
William Borel	227	134
Harry B. De Kay	236	139
Major E. J. Dent (recalled)	257	151
Walter Y. Kempner (recalled)	270	159
Ben Laws	272	160

	Original.	Print.
Charge of the court and exceptions thereto	277	163
Exhibits—Letter, Assistant Secretary of War to the Attorney General, October 14, 1919	279	164
Regulations to govern navigation etc	280	164
Letter, Alpha to U. S. Attorney, April 23, 1920	283	166
Letter, U. S. Attorney to Alpha, May 22, 1920	288	169
Letter, Major E. J. Dent to Alpha, June 3, 1920	289	169
Motion and order for transmission of original exhibits	290	170
Stipulation as to original exhibits	293	171
Praecipe for transcript	294	172
Clerk's certificate	298	174
Argument and submission in circuit court of appeals for the fifth circuit	299	174
Opinion of the court (March 29, 1921), Walker, J	300	175
Judgment (March 29, 1921)	306	179
Petition of defendant in error for rehearing	307	179
Order granting rehearing	313	182
Opinion of the court (January 21, 1922), King, J	314	183
Judgment (January 21, 1922)	320	186
Petition of plaintiff in error for rehearing	321	187
Order denying rehearing	329	191
Petition for writ of error and order allowing same	329	191
Assignment of errors	331	192
Supersedeas bond	333	194
Extracts from exhibits	335	195
House Document No. 640, 59th Congress, 2d session	335	195
House Document No. 610, 63d Congress, 2d session	344	204
Praecipe of plaintiff in error for transcript and notice thereon	352	213
Praecipe of defendant in error for transcript	356	216
Clerk's certificate	358	217
Writ of error	359	218
Citation and marshal's return of service	360	219

a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, circuit judges.

ALBERT HANSON LUMBER COMPANY, LIMITED, Plaintiff in Error

versus

UNITED STATES OF AMERICA, Defendant in Error.

Be it remembered, That heretofore, to-wit, on the 17th day of December, A. D. 1920, a transcript of the record in the above styled cause, pursuant to a writ of error to the District Court of the United States for the Eastern District of Louisiana, was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3644, as follows, to-wit:

b TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LIMITED, Plaintiff in Error

versus

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Eastern District of Louisiana.

[Original record filed December 17, 1920.]

U. S. Circuit Court of Appeals. Filed Jan. 18, 1921.

FRANK H. MORTIMER,
Clerk.

1 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

No. 16242.

UNITED STATES OF AMERICA
versus
ALBERT HANSON LUMBER COMPANY, LIMITED.

Appearances:

Messrs. E. Howard McCaleb and Emmet Alpha, Attorneys for Albert Hanson Lumber Company, Limited, Plaintiff in Error;
Messrs. Henry Mooney, United States Attorney, and J. D. Dresner, Special Assistant to the United States Attorney, Attorneys for the United States of America, Defendant in Error.

Writ of Error to the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, from the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty days from August 20th, 1920, at the City of New Orleans, State of Louisiana.

Return day enlarged and extended to November 20th, 1920, by the Hon. Nathan P. Bryan, Circuit Judge, on petition of the Albert Hanson Lumber Company, Limited.

Return day further extended to December 20th, 1920, by the Hon. R. W. Walker, Circuit Judge, on petition of the Albert Hanson Lumber Company, Limited.

TRANSCRIPT OF RECORD.

2 *Petition.*

Filed June 10, 1920.

United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 16242.

UNITED STATES OF AMERICA
vs.
ALBERT HANSON LUMBER COMPANY, LTD., et als.

To the Honorable District Court of the United States for the Eastern District of Louisiana, New Orleans Division:

The petition of the United States of America, appearing herein through Henry Mooney, United States Attorney, and Jacob D. Dres-

ner, Special Assistant to the United States Attorney for the Eastern District of Louisiana, who is hereto duly authorized, respectfully represents:

I.

That by an Act of Congress approved March 2nd, 1907, entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," provision was made for "Improving Inland Waterway Channel from Franklin to Mermentau, Louisiana."

II.

That by Act of Congress approved July 25, 1912, provision was made for "Improving waterway from Franklin to Mer-
3 mentau, Louisiana," and that under said Act the Secretary of War was authorized to purchase, for use as a part of said waterway, the so-called Hanson Canal, of which the Albert Hanson Lumber Company, Limited, is record owner, and which purchase was to be made in accordance with the recommendations of the Chief of Engineers, at a cost not to exceed sixty-five thousand ($65,000) dollars, to be paid out of funds heretofore appropriated for said project.

III.

That the above-mentioned Hanson Canal extends through a portion of the route recommended for said inland waterway, and it is necessary for the United States to have and to own, in addition to the Hanson Canal proper, a strip of land of a total width of 300 feet, inclusive of said canal, in order to enlarge and improve said canal, and the said Albert Hanson Lumber Company, Limited, is also the owner of said strip of land 300 feet in width.

IV.

That the United States Government, petitioner herein, has proposed and agreed to purchase, and the said Albert Hanson Lumber Company, Limited, accepted said proposal and agreed to sell for the sum of sixty-five thousand ($65,000) dollars, the said canal situated in the Parish of St. Mary, State of Louisiana, and within the jurisdiction of this Court, including a strip of land 300 feet wide, and all locks and other constructions for improvement of said canal, and all other structures and encumbrances located on the said strip
of land, except the Morgan's Louisiana and Texas Railroad
4 and Steamship Company's Railway bridge, a railway bridge belonging to the Iberia, St. Mary and Eastern Railway Company, and one highway bridge, all of which will more fully appear by detailed description of said canal and strip of land, etc., shown by the documents marked Exhibits (1) to (3), inclusive, which are annexed hereto and made part hereof. That in pursuance of said

agreement to sell, the directors of said Albert Hanson Lumber Company, Limited, passed a resolution on September 29th, 1913, authorizing T. Cheney Lawless, its Vice-President, to make said conveyance to petitioner for the sum of sixty-five thousand ($65,000) dollars.

That in the meantime, petitioner caused the title to said property to be examined and after curing a number of objections connected with said title which were necessary to be removed before the property herein involved could be freely used by petitioner for the said canal purposes, all of which examination and curative steps consumed considerable time, petitioner declared itself ready to accept title to the said property.

V.

That, the said Albert Hanson Lumber Company, Limited, now declines to convey the above mentioned property to petitioner notwithstanding that the petitioner is ready, willing and able to comply with its obligations under the afore-mentioned agreement.

VI.

Petitioner avers that the acquisition of the property hereinbefore referred to in paragraph IV, of this petition, is of vital importance to the public, and particularly to the citizens of this District,
5 which District the said inland Waterway will traverse, and that because of the refusal of the said Albert Hanson Lumber Company, Limited, to comply with its above mentioned agreement and convey said property to petitioner, it becomes necessary to condemn said property by judgment of this Honorable Court rendered according to law.

VII.

Petitioner further avers that one of the reasons given by the said Albert Hanson Lumber Company, Limited, for not conveying said property by warranty deed to petitioner, as it was obligated to do, is the discovery by the said Albert Hanson Lumber Company, Limited, that the interest of Miss Georgia Bentz, a minor posthumous child of George J. Bentz, a former owner of property through which the Hanson Canal has been dug, may not have been legally divested, and that the said Albert Hanson Lumber Company, Limited, would render itself liable to petitioner as warrantor in the event a competent Court should hold that the interest of the aforesaid minor, Georgia Bentz, had not been legally divested.

VIII.

Your petitioner avers that, in its opinion, the said minor Georgia Bentz has no interest in said property even though the said property belonged to the estate of George J. Bentz, her deceased father, and was sold before her birth, for the reason that the property was sold under judgment of a competent Court to pay debts of the estate

of her said father, and the said Georgia Bentz, together with her co-heirs, would only have an interest in the residue upon the payment of the debts of the estate of the said George J. Bentz.

6 Petitioner furthers avers that the said minor, Georgia Bentz, is now represented by Alice Miller, widow of George J. Bentz, her duly qualified natural tutrix, and petitioner desires that the said Miss Georgia Bentz, through Alice Miller, widow of George J. Bentz, her said tutrix, be made a party to this proceeding in order that she may assert such right as she may have against the proceeds of the award which the jury in this case may fix as the value of the property.

Wherefore, the premises considered, petitioner prays that the Albert Hanson Lumber Company, Limited, and Mrs. Alice Miller, widow of George J. Bentz, the natural tutrix of the minor, Georgia Bentz, be duly cited to appear and make answer hereto, and that after due delays and formalities, the hereinbefore described and designated property be adjudged to your petitioner, the United States of America, for its use and purposes, upon the payment to the owner of the value of said property together with such damages, if any, they may sustain in consequence of the expropriation of said property, and that the necessary order of notice to the said owners of said property be indorsed hereon, and for such orders as may be necessary for the listing, drawing and summoning a jury of free holders to fix the value of said property, and to assess all such damages as the owners of said land may suffer, and for judgment upon such verdict as may be rendered herein according to law.

And for all general and equitable relief.

(Signed) HENRY MOONEY,
U. S. District Attorney.

(Signed) JACOB D. DRESNER,
Special Asst. to U. S. Atty.

7 *Order.*

Considering the foregoing petition, it is ordered that the Clerk and the Marshal of District Court of the United States for the Eastern District of Louisiana (New Orleans Division), give notice according to law, to the Albert Hanson Lumber Company, Limited, and to the minor, Georgia Bentz, through Alice Miller, Widow of George J. Bentz, her duly qualified natural tutrix, the defendants named in the foregoing petition of the foregoing application of the United States of America to condemn and expropriate the property described in the foregoing petition belonging to said defendants or in which they may have an interest, and that each of said defendants be served with citations and a copy of said petition.

It is further ordered that the said Clerk and the Marshal of the United States District Court for Eastern District of Louisiana (New Orleans Division) make, according to law, a list of forty-eight free holders, residents of the Parish of St. Mary in the Eastern District of Louisiana, and not interested in the issue of the case to be tried

between the United States of America and said defendants or their heirs, executors, administrators, or assigns, and proceed to draw therefrom twenty-four names as persons to summon therein to appear at the city of New Orleans in the District Court of the United States for the Eastern District of Louisiana (New Orleans Division) to serve herein on Monday, July 19, 1920, at 10.30 A. M., observing, however, to give them full ten days to appear from the date of service.

New Orleans, June 10, 1920.

(Signed) RUFUS E. FOSTER,
Judge.

8 Henry Mooney being duly sworn deposed and said that he is of counsel herein and that all the allegations contained in the foregoing petition are true and correct to the best of his knowledge, information and belief.

(Signed) HENRY MOONEY,
U. S. Attorney.

Sworn to and subscribed before me at New Orleans, June 8, 1920.
(Signed) J. D. DRESNER,
Notary Public.

Note.

The following documents, maps, diagrams and exhibits were transmitted to the Hon. U. S. Circuit Court of Appeals for the Fifth Circuit in the originals as per motion and order to transmit certain documents, etc., in the originals, and stipulations of counsel copied herein, to wit:

1. Exhibit "3," referred to in the petition of the United States of America;

2. Exhibit "2," referred to in the petition of the United States of America;

3. House Document No. 610, House of Representatives, 63rd Congress, second session, being letter from Secretary of War transmitting report of Chief Engineer relative to Intercoastal Waterway, and referred to in Act of Congress of July 25th, 1912, page 16 of said report, paragraph 19, and the remaining portion of paragraph 19, on page 17, and pages 42 and 45, down to the paragraph on page 17.

9 4. House document No. 640, 59 Congress, 2nd session, referred to in Act of March 2nd, 1917.

5. Charter of the Albert Hanson Lumber Co.

6. Map or diagram of Hanson Canal offered and filed in connection with testimony of Walter Y. Kempner.

Exceptions.

Filed June 29, 1920.

United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LTD., et als.

To the Honorable the District Court of the United States for the Eastern District of Louisiana, New Orleans Division:

Now comes the Albert Hanson Lumber Company, Ltd., and for exception to plaintiff's petition, says:

First. That said petition is too general, vague and indefinite, and its allegations inconsistent and contrary to the relief prayed for.

Second. That said petition discloses no right or cause of action, and that the same and the Acts of Congress exhibits no authority in Court, or Jury of free holders, for condemnation and adverse taking of the Lands or property, mentioned in said petition, and that, therefore the said proceeding is without warrant of Law.

10 Wherefore, exceptor prays that these exceptions be sustained, and this suit dismissed.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Attorneys for Exceptor, Albert Hanson Lumber Company, Ltd., Defendant.

Certificate.

I, E. Howard McCaleb, Attorney for the Albert Hanson Lumber Company, Ltd., do certify that the foregoing exceptions are filed in good faith, and not merely for the purpose of delay, and that the same, in his opinion, are good in Law.

(Signed) E. HOWARD McCALEB.

Exceptions.

Filed July 10, 1920.

United States District Court, Eastern District of La.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER CO., LTD., et als.

To the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of La., New Orleans Div.:

Now comes Albert Hanson Lumber Co., defendant, and for additional and further exception to plaintiff's petition, says: That there is a misjoinder of parties defendant and a misjoinder of causes of action.

11 Wherefore exceptor prays that said exception be maintained and plaintiff's suit dismissed.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Attys. for Exceptor.

I, E. Howard McCaleb, hereby certify that the foregoing exception is in his opinion good in law, is not interposed for purpose of delay and is made in good faith.

(Signed) E. HOWARD McCALEB,
Atty. for Exceptor.

Hearing of Exceptions and Order Overruling Same.

Extract from the Minutes.

May Term, 1920.

New Orleans, Monday, July 12th, 1920.

Court met pursuant to adjournment;
Present: Hon. Rufus E. Foster, Judge.

Proceedings Before Honorable Rufus E. Foster, Judge.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER CO., LTD., et als.

This cause came on this day to be heard upon the exceptions filed by the Albert Hanson Lumber Company, Ltd., one of the defendants, to the petition of plaintiff herein:

12 Present: E. Howard McCaleb, of counsel for said defendant, exceptor;

Present: Jacob D. Dresner, Special Assistant to the United States Attorney, appearing on behalf of the United States of America, plaintiff in suit;

and was argued by counsel for the respective parties;

Whereupon, and on due consideration thereof, it is ordered by the Court that the said exceptions herein be, and the same are hereby, overruled:

It is further ordered by the Court that the said defendant be allowed until, Friday, July 16th, 1920, to file its answer herein.

Motion to Strike Out and Order Denying Same.

Filed July 16, 1920.

United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LTD., et al.

To the Honorable Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana:

Now comes the Albert Hanson Lumber Company through its Counsel, Emmet Alpha and E. Howard McCaleb, and move
13 the Honorable Court to strike out articles four, five, six and so much of article seven which refers to your mover, on the ground that said allegations and averments are irrelevant, immaterial and impertinent.

It is ordered that articles four, five, six and so much of article seven as refers to the Albert Hanson Lumber Company, be stricken

out and that the plaintiff do show cause to the contrary on Saturday July 17, 1920, at 10:30 o'clock A. M., and until a decision on the foregoing motion is had, defendant be relieved from answering.

——— ———,
Judge.

Motion ordered filed and denied.

(Signed) RUFUS E. FOSTER,
Judge.

July 16/20.

Answer.

Filed July 17, 1920.

United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LTD., et al.

To the Honorable the District Court of the United States for the Eastern District of Louisiana, New Orleans Division:

Now comes the Albert Hanson Lumber Company, Limited, made defendant, and with full reservation of all benefits and
14 advantages derived from the motion to strike out, filed and denied, and from the exceptions heretofore filed and overruled, and in no manner waiving the same but specially insisting thereon, answers plaintiff's petition as follows:

1.

The allegations contained in paragraphs one and two of the petition are admitted, save and except as may be hereinafter averred or denied.

2.

The allegations contained in paragraph three of the petition to the effect that your respondent, is the owner of the Hanson Canal therein referred to, together with the strip of land adjoining the same and measuring 300 feet in width, are admitted to be true; but the allegations contained therein, to the effect that it is necessary that said canal or said strip of land be condemned and pass in ownership to the plaintiff, are denied.

3.

Respondent denies the allegations of paragraph four of plaintiff's petition, save and except, respondent avers that negotiations were pending between the plaintiff and respondent for the purchase of the Hanson Canal, under certain conditions and exceptions, whereby plaintiff proposed to purchase and respondent proposed to sell the Hanson Canal, including the said 300 foot strip and all locks and constructions thereon, except the Railway and Highway Bridges, for the sum of $65,000.00 on and as of date September 29th,
15 1913, upon the promises, respresentation of plaintiff and the understanding that said transaction was in no manner to prejudice the rights of respondent in the use of said Canal, or to subject it to any loss, injury, damage, inconvenience, or destruction to its timber operations, lumber, commercial and saw mill business, and further that said transaction was not to be finally consummated until the plaintiff had widened said Canal from 40 feet wide to 100 feet, or more, wide, and had further provided passing places in said canal of 1,000 feet long and fifty feet wider than said canal, so as to thus permit the free use, access, ingress and egress of said Canal by respondent, for its said business, and further, that respondent shall be entitled to have and remove all the trees and timber growing on the banks of said Canal and of said 300 foot strip, for a period of six months from the time plaintiffs shall have made actual payment and shall have taken actual possession, and further that your respondent shall always have and enjoy a free access, ingress and egress to and from said Canal through the lateral canals, then and now constructed and used by respondent in its timber operations and lumber business and for all commercial purposes as the said lateral canals may be thereafter or hereafter used for, even after the said Hanson Canal shall have been converted into a Public Inland Waterway.

But your respondent shows and avers that notwithstanding said promises, conditions and proposed understandings, said plaintiff violated the same before and after the confection of a deed, refused *refused* to accede thereto, and in furtherance of its violations and refusals, notified respondent that it would neither widen or improve said Canal as hereinbefore averred, nor permit the taking and removal of trees and timber from said Canal and of said 300
16 foot strip, nor permit your respondent the perpetual enjoyment of free access, ingress and egress to and from said Hanson Canal through the lateral Canals, now and then constructed and used by respondent in its timber operations and lumber business, and for such commercial purposes as the said lateral canals may be hereafter used for, even after said Hanson Canal shall have been converted into a Public Inland Waterway. That the foregoing conditions were, and are of vital importance to your respondent, and in the event of said proposed purchase would have redounded to the benefit of all concerned, but by reason of the subsequent representations, proposed regulations and refusals made by plaintiff to the effect that it would neither widen said canal, now construct said passing

places, nor permit respondent to remove the trees on the banks, and on said 300 foot strip, nor permit the free access, egress and ingress of respondent, as hereinbefore averred, said negotiations and proposed purchases were receded from and annulled.

4.

For want of information, respondent neither admits nor denies the allegations of paragraphs 7, 8, and 9, of plaintiff's petition, and therefore demands strict proof thereof.

5.

Further answering respondent shows and avers that the acts of Congress of March 2, 1907, U. S. Stat. at L., Vol. 34, p. 1089—Chap. 2509, entitled an Act making an appropriation for improving inland Waterway channel from Franklin to Mermentau, Louisiana, exhibits no authority in the Court for condemnation and adverse taking of the Hanson Canal, or any other property belonging to re-
17 spondent, mentioned in the petition, or otherwise, and therefore these proceedings should be dismissed. Respondent further shows and avers that the eastern terminus of the Hanson Canal is located about 3½ miles South and from the corporate limits of Franklin, Louisiana, and extends in a westerly direction to Bayou Portage, and accordingly no right or authority is vested in this Court, nor is any provision made by law to condemn or take the said Hanson Canal and other property of Respondent, as is proposed in these proceedings. That further, said act of March 2, 1907, gives no authority to condemn any existing canal, either at or within the corporate limits of the Town of Franklin, or anywhere else, by reason whereof no authority is or was vested by Congress in this Court, for the condemnation of said Hanson Canal, or other property of your respondent mentioned in plaintiff's petition.

6.

Further answering respondent shows, that by act of Congress of March 3, 1909, 35 U. S. Stat. at L., Chap. 264, pages 815-816, the location of the eastern terminus of said proposed Inland Waterway Channel from Franklin to Mermentau, adopted by Congress under the said act of Congress of March 2, 1907, was authorized to be changed from the Town of Franklin on Bayou Teche to such other point on said Bayou as the Secretary of War may select, provided that the modification therein authorized shall not be made unless a valid title of the necessary right of way be secured to the United States, free of cost.

Now your respondent avers that said Act of 1909, exhibits no authority in this Court to condemn the 300 foot strip owned and
18 possessed by respondent adjacent to the right of way and eastern terminus of the Hanson Canal, in that said act, and these proceedings are in violation of the Fifth Amendment of the Con-

itution of the United States, and in that no provision is made by aw to condemn said strip, upon paying just compensation to re-pondent.

7.

Further answering respondent shows and avers, that by act of Congress of July 25, 1912, 37 U. S. Stat. at L. Chap. 253, pages 201-212, the Secretary of War was authorized to purchase, for the use as a part of said Waterway, the Hanson Canal, at a cost not to exceed $65,000 in accordance with the recommendation made by the Chief Engineer. That the Chief Engineer had recommended in House Document 610, 63rd Congress, 2d Session, four distinct or alternative routes from Bayou Teche to Mermentau, at pages 42 and 45 of said Document 610, each alternative route having its eastern terminus as follows: One at Franklin; one at Centreville; one at Jeanerette and one at Hanson Canal. That said Engineer recommended the Hanson Canal route having for the eastern terminus of said waterway the head or lock end of the Hanson Canal as the best route, the Centerville route having for its eastern terminus the Town of Centreville on Bayou Teche as the second best, Franklin as the third best, and Jeanerette as the fourth best. That Congress accordingly adopted the recommendation of the Chief Engineer, provided that said Hanson Canal could be purchased for the sum of $65,000.00 and provided further under the act of March 3, 1909, all other right of way which included the 300 foot strip adjacent to said Canal, be acquired by the United States, free of cost to it. Now respond-19 ent shows and avers that said acts of Congress of July 25, 1912, and of March 3, 1919, authorizing a change of route or eastern terminus from Franklin to any other point on Bayou Teche, conferred only a power to purchase the said Hanson Canal and a power to acquire by gift said 300 foot strip, and conferred no authority on the Secretary of War or this Court to condemn, either the Hanson Canal or said 300 foot strip belonging to petitioner, and further that said acts and these proceedings are in violation of the Fifth Amendment of the Federal Constitution in that, no provision by Congress is made for just or adequate compensation.

8.

Respondent shows and avers, that the true and fair value of said Hanson Canal exceeds the sum of $152,000.00 exclusive of the right of way itemized as follows:

Excavations	$64,400.00	
Locks	40,793.60	
Railroad Bridge	25,638.00	
Highway Bridge	3,884.57	
Piling 3,000 Foot of Bank	10,350.00	
Engineering and Supervision	6,933.52	
Total		$152,000.00

exclusive of right of way, that the cost and value of said right of way and that said 300 foot strip exceeds the sum of $6,100.00. And respondent shows that another Canal to serve the business, timber operations, lumber and saw mill business, and other commercial business of your respondent for which said canal was specially
20 built and for which it is adapted cannot be constructed and that no right of way for such construction could be secured by respondent.

9.

Respondent further shows and avers that it owns and operates a Cypress Lumber Mill near the locks of said Canal and at Garden City on Bayou Teche; that said Canal is now and at all times heretofore and hereafter necessary to the operation of said mill of your respondent, its timber, lumber and commercial operations in accordance with its charter. That the proposed taking will destroy its said business and respondent suffer irreparable injury and damage; in the event of the proposed taking; that the injury and damage suffered or that will be suffered by your respondent in addition to the value of its said Canal and 300 foot strip, in the event condemnation is ordered and said property wrested from the exclusive control and ownership of respondent, exceeds the sum of Two Million Dollars, that said damages are of a permanent character that will continue without change up to the date and after the expiration of its charter, in that, your respondent is deprived of the right to store timber in said Canal, thereby subjecting it to an annual loss and damage of over $10,000.00, in that, in the event the said Canal is thrown open to the public use, the reduction of length of tow to one thousand feet, will entail a loss and damage to respondent of $10,000.00 per annum; interruption of other timber operations $2,230 per annum; interruption by boats on timber days, $1,000.00 per annum; loss of three timber towing days $500.00 per annum; interruption of three timber towing days $15,000 per annum.

That by reason of the foregoing losses and damages, and the
21 regulations of the United States Government governing the navigation and the floating of logs and rafts on the said Hanson Canal in pursuance of the authority conferred by act of Congress, approved May 9th, 1900; and in addition to the foregoing specified annual losses and damage and in order to comply with said regulations, your respondent will be compelled to purchase 2 additional Tow Boats at a cost of — Dollars plus an annual expense of operation of $24,000.00 or $240,000.00 in ten years.

Respondent annexes hereto a copy of the regulations above referred to which takes effect in the event of the condemnation of respondent's property and on the date the United States shall have obtained the possession thereof, marked Exhibit "A."

10.

Respondent further shows and avers that in the event of the condemnation of its said Canal, the lateral canals owned and operated

by respondent and the heads thereof used by respondent for its said timber and logging operations, would become useless and unavailable, in virtue of which respondent will suffer further loss and damage in the sum of $50,000.00. That respondent has constructed a lateral canal not herein sought to be possessed by the United States, connecting with said Hanson Canal, at a cost of $26,740.06, which said lateral Canal would be rendered useless and become a total loss to respondents because of the proposed condemnation of said Hanson Canal and the regulations hereinbefore referred to; and in the event of your respondent's property is taken from it, respondent will suffer a further loss and damage in said sum of $26,740.06.

22

11.

Respondent further shows and avers that said Hanson Canal has an average width of 40 feet, of which is 37 feet wide at the narrowest point, 30 feet wide at its locks, 26 feet at the railroad bridge. That said Canal is available for the business and purposes of your respondent, and to throw it open to the public would entail great loss and damage and hardship upon respondent. That in view of these proceedings, respondent endeavored to obtain or secure other means in order to save it from the great loss and damage resulting from the condemnation proposed, but without avail. That no right of way could be secured whereby its timber, lumber and commercial operations could be carried on other than by the exclusive use of its said Canal.

12.

That the foregoing is a just and true value of this said property and a just and true amount of the loss and damage it will suffer, in the event of condemnation and as hereinabove averred. Value of Hanson Canal, exclusive right of way $152,000.00; value of right of way, including 300 foot strip $6,100.00; loss and damage in the event the Hanson Canal is condemned, $2,000,000; loss and damage and expense of operating 2 tow boats $240,000; cost or value of lateral canal rendered useless $26,740.06; loss of use and value of heads of other lateral canals $50,000.00, total $2,474,840.06.

13.

Respondent shows and avers, that there is no provision made by law to pay your respondent for the value of the
23 property herein sought to be condemned, nor any provision made by law to pay the losses and damages that will be suffered in consequence of the deprivation of its property as herein attempted. And accordingly, Respondent specially avers that the proceedings herein are null and void, in violation of the Fifth Amendment of the Federal Constitution in that no adequate provision has been made for just compensation to be paid your respondent, and further in that these proceedings and decree sought is in violation of the acts of Congress hereinbefore referred to.

Wherefore Respondent prays that these proceedings be dismissed and plaintiff's demand rejected, that its rights in the premises shall be wholly protected and for such judgment and relief as the nature of the case and as the law and justice requires.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Att'ys for Respondent.

Affidavit.

E. Howard McCaleb, being sworn deposes and says: That he is the Attorney for respondent, that he has prepared said answer and that all the allegations of fact therein contained are true and correct, except such made on information and belief and as to these affiant believes them to be true.

(Signed) E. HOWARD McCALEB.

Sworn to and subscribed before me, this 17 day of July, 1920.

(Signed) J. A. WOODVILLE,
[SEAL.] *Notary Public.*

24 *Case Called, Jury Empaneled, Hearing in Part, and Continuance.*

Extract from the Minutes.

May Term, 1920.

New Orleans, Monday, July 19th, 1920.

Court met pursuant to adjournment;
Present: Hon. Rufus E. Foster, Judge.
Proceedings before Honorable Rufus E. Foster, Judge:

No. 16,242.

UNITED STATES OF AMERICA

VS.

ALBERT HANSON LUMBER CO., LTD., et als.

This cause was this day called for trial:
Present: Henry Mooney, United States Attorney, and Jacob D. Dresner, Special Assistant to the United States Attorney, appearing on behalf of the United States of America, plaintiff;
Present: E. Howard McCaleb and Emmet Alpha, attorneys for the Albert Hanson Lumber Co., Ltd., one of the defendants.
Whereupon the following named jurors were called and sworn to well and truly try the issue joined herein, to-wit:

1. George Blanchard,
2. J. Shelby Bourg,
3. W. F. Giles,
4. August Gronen,
5. A. J. Gibbons,
6. C. S. Breen,
7. C. J. Martin,
8. C. W. Frosch,
9. Clarence A. Aycock,
10. J. M. Blackburn,
11. H. M. Cotten,
12. Thomas J. Johnson,

and the trial was proceeded with;

After hearing the pleadings, evidence and testimony in part, it was ordered by the Court that this cause be continued until tomorrow, at 10:30 o'clock A. M., for further hearing—and the Court cautioned the jurors empaneled in the cause not to converse with any one or among themselves touching the matter in controversy."

Further Hearing and Continuance.

Extract from the Minutes.

May Term, 1920.

New Orleans, Tuesday, July 20th, 1920.

Court met pursuant to adjournment;

Present: Hon. Rufus E. Foster, Judge.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER CO., LTD., et als.

"This cause, as continued from yesterday, was this day resumed, counsel for the respective parties as well as the jurors empaneled in the cause being all present, and the trial was proceeded with:

After hearing further evidence and testimony, it was ordered by the Court that this cause be continued until tomorrow at 10:30 o'clock A. M., for further hearing."

26 *Further Hearing and Verdict.*

Extract from the Minutes.

May Term, 1920.

New Orleans, Wednesday, July 21st, 1920.

Court met pursuant to adjournment;

Present: Hon. Rufus E. Foster, Judge.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER CO., LTD., et als.

"This cause, as continued from yesterday, was this day resumed, counsel for the respective parties as well as the jurors empaneled in the cause being all present, and the trial was proceeded with:

After hearing further evidence and testimony, and arguments of counsel for the respective parties, and, receiving a charge from the Court, the said jury retired to their room to deliberate as to their verdict, and after due deliberation, the said jury returned into Court, and then and there, in open Court, in presence of counsel for the respective parties, did, through their foreman, H. W. Cotten, render and deliver the following verdict, to-wit:

"We the jury find a unanimous verdict for the United States of America condemning to it the property herein sued for and assess as the value thereof, the sum of Sixty-five Thousand and no/100 Dollars ($65,000.00) in favor of the Albert Hanson Lumber Co., Ltd."

(Signed) H. W. COTTEN,
Foreman.

New Orleans, July 21/1920.

27 Whereupon, on motion of counsel for plaintiff, it was ordered by the Court that the said verdict be recorded, and it is done accordingly; and it was further ordered that said jury be discharged from further consideration of this cause."

ler Allowing Motion for New Trial to be Filed and Fixed for August 7, 1920.

Extract from the Minutes.

May Term, 1920.

New Orleans, Tuesday, July 27th, 1920.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER CO., LTD., et als.

"This day, in open Court, appeared E. Howard McCaleb, Esq., of nsel for the Albert Hanson Lumber Company, Limited, one of e defendants, and presented a motion for a new trial on behalf said defendant herein, and thereupon, it was ordered that the said tion for a new trial be filed.

It was further ordered, on motion of Jacob D. Dresner, Special sistant to the United States Attorney, that the said motion for new trial herein be assigned for trial on Saturday, August 7th, 20, at 10.30 o'clock A. M."

Motion for New Trial.

Filed July 27, 1920.

nited States District Court, Eastern District of Louisiana, New Orleans Division.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LTD., et als.

Now comes defendant, Albert Hanson Lumber Company, Lim-d, in the above entitled cause and moves the Court to set aside d vacate the verdict of the jury herein and the judgment herein ndered on said verdict and grant a new trial of said case for the llowing reasons:

(1) The said verdict and judgment is contrary to the law, in that, the acts of congress exhibit no authority in the Court or Jury for condemnation and adverse taking of the Hanson Canal, and in that, the acts of Congress exhibit no authority in the Court or Jury for condemnation or adverse taking of the strip of 300 feet, mentioned in plaintiff's petition or any part thereof, adjacent to said Hanson Canal, or any other property mentioned in petition, and hence these proceedings, said verdict and judgment are without warrant of law and otherwise violative of the Fifth Amendment of the Federal Constitution.

(2) That said verdict and judgment is contrary to law, in that the acts of Congress of March 3, 1909, and February 27, 1911, are violative of the Fifth Amendment of the Federal Constitu-
29 tion. Acts of March 2, 1909, and February 27, 1911, under which — 300 foot strip of land and other property mentioned in plaintiff's petition is sought to be condemned by these proceedings, are violative of the Fifth Amendment of the Constitution.

(3) That said judgment and verdict is contrary to law, in that the act of March 2, 1907, exhibits no authority to condemn any Canal or property at the eastern terminus of Bayou Teche or any other point on Bayou Teche, other than from the Town of Franklin, and that therefore said verdict and judgment of these proceedings are without warrant of law.

(4) Said verdict and judgment is contrary to law, in that, the acts of Congress of July 25, 1912, exhibits no authority to condemn the Hanson Canal, and further that said acts of Congress only authorized a power to purchase and that said power to purchase did not include the power to condemn, nor was it the intention of Congress under said act of July 25, 1912, to authorize the condemnation of said Hanson Canal, and further that said Act of July 25th, 1912, exhibits no authority for the purchase or condemnation of said 300 foot strip or so much thereof adjacent to said Hanson Canal, nor was it the intention of Congress to authorize the condemnation of said 300 foot strip in and by said Act of 1912, or any Act of Congress, in consequence whereof these proceedings and said verdict and judgment are violative of the Fifth Amendment of the Federal Constitution, in that, it deprives defendant of its property without due process of law, and of just compensation to be paid therefor.

(5) The Court committed error in over-ruling defendant's exceptions and motion to strike out, heretofore filed and further
30 committed error in over-ruling defendant's objections to evidence, interposed at the beginning of the trial to which ruling defendant duly excepted at the time.

(6) The Court committed error in excluding competent, relevant and material evidence offered in behalf of the defendant, and to which action of the Court in excluding the said evidence, the defendant duly excepted at the time.

(7) The Court committed error in admitting incompetent, irrelevant, immaterial and improper evidence offered on behalf of the plaintiff, over the objections of defendant duly made at the time.

(8) The Court gave improper intructions to the Jury.

(9) Because the verdict and judgment is against the weight of evidence.

(10) Because the verdict is against the law and the evidence.

(11) Because under the pleading and on the evidence of the case, the verdict should be in favor of the defendant.

(12) The Court committed error in the refusing to instruct the Jury that the defendant was entitled to damages, consequent upon the adverse taking of the property of the defendant, mentioned in the petition, and the Court further erred in instructing the Jury not to consider the evidence offered in that behalf, to which
31 action of the Court in failing to instruct as requested, and to which action of the Court defendant duly excepted at the time.

(13) The Court erred in certain particulars of its charges, excepted to by the defendant at the time.

(14) There was no testimony tending to sustain the verdict.

(15) Because under the pleadings and all of the evidence of the case, the verdict should be in favor of the defendant.

(16) Because the verdict on its face evidences that and it is the result of bias passion and prejudice upon the part of the Jury.

(17) Because the United States District Attorney in addressing the Jury stated that should they find an amount in excess of $65,000 that the project would have to be abandoned and the public deprived of the use of Hanson Canal, for the reason that no appropriations equivalent to the value of the property except and beyond said sum of $65,000 had been made by the Congress, or words to that effect, and which statement of the United States District Attorney tended to create bias, prejudice and passion, against the defendant, all of which and the admission of improper evidence duly excepted to at the time, tended to create in the minds of the Jury bias, prejudice and passion against the defendant because it refused to consent to the purchase by the United States of said Hanson Canal.

(18) Because said verdict and judgment on its face, and in view of the evidence, shows that the Jury, in disregard of the instructions and the pleadings and issues, usurped its powers and
42 did not take into account the uncontradicted present value of said canal and property and the damages due the defendant, basing its verdict as for a specific performance of an alleged and pretended contract of purchase; and further erroneously fixed

said sum of $65,000 under and by virtue of said pretended contract of purchase, said Jury being without power or authority to adjudge or find for a specific performance.

(19) Because said verdict and judgment discloses on its face, and in pursuance of the bias, prejudice and passion against defendant by said Jury, that even if it had power and authority to enforce a specific performance of said pretended contract which is denied, said verdict and said Jury was influenced in its finding not by any consideration due defendant, but in consequence of the purchase price fixed by the Act of Congress of July 25th, 1912, and the pretended and unexecuted contract of purchase, as constituting an estoppel against defendant from claiming the true value and as being conclusive of the value of said property in 1912, and in 1920, or for all time; and further that said verdict did not take into account the property specially excluded from said pretended contract of purchase, such as the Railroad and highway bridges belonging to defendant and the other exceptions and conditions annexed to said proposed and pretended contract of purchase.

(20) Because said verdict and judgment on its face and in view of the evidence does not take into account that the compensation to the defendant is to be estimated by reference to the uses for which the property is suitable having regard to the existing business or wants of the community or such as may be reasonably expected in the immediate future.

33 *Order Overruling Motion for New Trial.*

Extract from the Minutes.

May Term, 1920.

New Orleans, Saturday, August 14th, 1920.

Court met pursuant to adjournment;
Present: Hon. Rufus E. Foster, Judge.

No. 16242.

UNITED STATES OF AMERICA

VS.

ALBERT HANSON LUMBER CO., LTD., et als.

"This cause came on this day to be heard upon the motion for a new trial filed by the defendants herein;

Present: E. Howard McCaleb, and Emmett Alpha, attorneys for Defendants, movers;

Present: Henry Mooney, United States Attorney, and Jacob Dreaner, Special Assistant to the United States Attorney, for plaintiff.

Whereupon, after hearing arguments of counsel for the respective parties, it is ordered by the Court that the said motion for a new trial herein be, and the same is hereby, overruled, that a new trial in this cause be refused, and that the verdict of the jury and judgment herein rendered remain undisturbed."

34 *Order Allowing Defendant to November 13, 1920, to File Bills of Exceptions.*

Filed August 14, 1920.

United States District Court, Eastern District of Louisiana.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LTD.

This day came the defendant, Albert Hanson Lumber Company, Limited, and made application for an order extending the time for the signing, allowance and filing of the bill or bills of exception herein, such application is granted and time for the signing, allowance and filing of the bill or bills of exception of the above named defendant is extended to the last day of the present term of Court, to wit: November 13th, 1920. Such bill or bills of exception when settled shall be taken and deemed as filed in apt time and during this term, shall be dated as of this term, and in any and all respects shall be considered the bills of exception in this case.

(Signed) RUFUS E. FOSTER,
Judge.

August 14th, 1920.

35 *Judgment.*

Extract from the Judgment Book.

May Term, 1920.

New Orleans, Friday, August 20, 1920.

Court met pursuant to adjournment;
Present: Hon. Rufus E. Foster, Judge.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LTD., et als.

"In this cause heretofore tried before a jury of freeholders of the Parish of St. Mary, State of Louisiana, wherein the property which

is the subject of this suit is situated, the Court considering answer filed herein by Mrs. Alice Miller Bentz, Natural Tutri the Minor Georgia Bentz, in behalf of said Georgia Bentz, in w answer any and all interest of the said Georgia Bentz, in property is disclaimed;

It is ordered, adjudged and decreed that Georgia Bentz be and is hereby declared to be without interest in the property herein for and hereinafter more fully described.

The Court further considering the verdict of the jury and the and the evidence, and the same being in favor of plaintiff, against the defendant, and justifying the relief hereinafter gra

It is ordered, adjudged and decreed that the property describe plaintiff's petition and the Exhibits thereof, be and the sam hereby condemned and adjudged to plaintiff, the United Stat America, for the purposes of and as prayed for in
36 petition, the same to vest in plaintiff, the United Stat America when the amount of the said verdict, to wit: the of Sixty-five thousand ($65,000.00) Dollars shall have been pa the Albert Hanson Lumber Company, Ltd., defendant herein, o Clerk of this Court, in accordance with law.

The property herein condemned and adjudged to the United S of America is more specifically described as follows:

All of that certain lot or strip or tract of land situated in Parish of St. Mary, State of Louisiana, and described as fol to wit:

Beginning at a monument at the northeast corner of Becnel erty, in the N. W. corner of T. 15 S., R. 10 E., which is desig as point number 1 on the map (hereinafter referred to), bein eight-inch iron pipe filled with concrete, situated about 10 feet the right bank of Bayou Teche, and about 50 feet N. W. of the N bank of the Hanson Canal, and running from said monument o azimuth of 212 degrees 01 minute (reckoning from a true be as 0 degrees north, 7,679.8 feet more or less to a point number N. E. boundary line of fractional Section 12, in T. 15 S., R. which is another iron pipe filled with concrete and marking the corner of L. A. & S. Becnel property;

Thence entering Section 12, T. 15, S. R. 9 E., on a straight bearing 213 degrees 12 minutes true azimuth, a distance of 1,48 feet, to point number 3 which is about 140 feet N. W. of sta Station 92 + 43 of base line on S. E. bank of Hanson Canal about 65 feet N. W. of N. W. bank of Hanson Canal;

Thence on a straight line bearing 212 degrees 01 minutes azimuth, a distance of 357 feet, to point number 4 which is a 140 feet N. W. of stake at Sta. 96 of base line on S. E.
37 of Hanson Canal and about 75 feet N. W. of N. W. ban Hanson Canal;

Thence on a straight line bearing 220 degrees 58 minutes azimuth, a distance of 345.9 feet, to point number 5 which is a 140 feet N. W. of stake at Sta. 99 + 81.4 of base line on S. E. of Hanson Canal and about 75 feet N. W. of N. W. ban Hanson Canal;

Thence on a straight line bearing 230 degrees 33 minutes true azimuth, a distance of 400 feet, to point number 6 which is about 140 N. W. of stake at Sta. 104 of base line on S. E. bank of Hanson Canal and about 78 feet N. W. of N. W. bank of Hanson Canal;

Thence on a straight line bearing 236 degrees 50 minutes true azimuth, a distance of 381.8 feet, to point number 7 which is about 140 feet N. W. of stake at Sta. 108 of base line on S. E. bank of Hanson Canal and about 78 feet N. W. of N. W. bank of Hanson Canal;

Thence on a straight line bearing 245 degrees 32 minutes true azimuth, a distance of 382.6 feet, to point number 8 which is about 140 feet N. W. of stake at Sta. 112 of base line on S. E. bank of Hanson Canal and about 78 feet N. W. of N. W. bank of Hanson Canal;

Thence on a straight line bearing 251 degrees 02 minutes true azimuth, a distance of 381.2 feet, to point number 9 which is about 140 feet nearly N. of stake at Sta. 116 of base line on S. bank of Hanson Canal and about 88 feet nearly N. of N. bank of Hanson Canal;

Thence on a straight line bearing 260 degrees 47 minutes true azimuth, a distance of 367 feet, to point number 10 which is about 140 feet N. of stake at Sta. 120 of base line on S. bank of Hanson Canal and about 80 feet N. of N. bank of Hanson Canal;

38 Thence entering Sec. 11, T. 15 S., R. 9 E., at about 690 feet from point 10, on a straight line bearing 269 degrees 54 minutes true azimuth, a distance of 2,999.16 feet, to point number 11 which is about 75 feet N. of stake at Sta. 150 of base line on N. bank of Hanson Canal and about 85 feet N. of N. bank of Hanson Canal;

Thence on a straight line bearing 269 degrees 46 minutes true azimuth, a distance of 1,200 feet, to point number 12 which is about 75 feet N. of stake at Sta. 162 of base line on N. bank of Hanson Canal and about 85 feet N. of N. bank of Hanson Canal;

Thence on a straight line bearing 269 degrees 50 minutes true azimuth, a distance of 1,509.7 feet, to point number 13, which is about 75 feet N. of stake at Sta. 177+09.7 of base line on N. bank of Hanson Canal and about 85 feet N. of N. bank of Hanson Canal;

Thence, entering Sec. 10, T. 15 S., R. 9 E., about 270 feet from point 13, on a straight line bearing 270 degrees 18 minutes true azimuth, a distance of 1,130.3 feet to point number 14 which is about 75 feet N. of stake at Sta. 188+40 of base line on N. bank of Hanson Canal and about 85 feet N. of N. bank of Hanson Canal;

Thence on a straight line bearing 268 degrees 52 minutes true azimuth, a distance of 419.7 feet, to point number 15 which is about 75 feet N. of stake at Sta. 192+59.7 of base line on N. bank of Hanson Canal and about 85 feet N. of N. bank of Hanson Canal;

Thence on a straight line bearing 278 degrees 11 minutes true azimuth, a distance of 940.3 feet, to point number 16 which is about 75 feet N. of stake at Sta. 202 of base line on N. bank of Hanson Canal and about 90 feet N. of N. bank of Hanson Canal;

39 Thence on a straight line bearing 267 degrees 53 minutes true azimuth, a distance of 704 feet, to point number 17 which is about 75 feet N. of stake at Sta. 209+04 of base line on N. bank of Hanson Canal and about 85 feet N. of N. bank of Hanson Canal;

Thence on a straight line bearing 270 degrees 46 minutes true azimuth, a distance of 587 feet, to point number 18 which is about 75 feet N. of stake at Sta. 214+91 of base line on N. bank of Hanson Canal and about 90 feet N. of N. bank of Hanson Canal, entering Friddlemeyer tract about 20 feet from point 17, the length of line through this tract being about 365 feet.

Thence re-entering Sec. 10, T. 15, S., R. 9 E., thence on a straight line bearing 266 degrees 06 minutes true azimuth, a distance of 185 feet to point number 19 which is about 75 feet N. of stake at Sta. 216+76 of base line on N. bank of Hanson Canal and about 90 feet N. of N. bank of Hanson Canal, said point being at the westerly intersection of Bayou Portage;

Thence from intersection point just described, and on a straight line bearing about 227 degrees true azimuth, and following the meanderings of the S. E. bank of the Bayou Portage, a distance of about 444 feet to a point No. 19-*a*, on the S. E. bank of Bayou Portage and on the south boundary of the 300-foot strip herein described; thence on a straight line bearing about 89 degrees 14 minutes true azimuth, a distance of 313 feet to point number 20 on the S. side of Hanson Canal about 175 feet from centre of canal or 155 feet from S. bank of Hanson Canal;

Thence, on the S. and S. E. side of Hanson Canal, running parallel with and 300 feet distant from the lines above described on the N. and N. W. side of Hanson Canal, passing through points 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and
40 37 to point 38, said point 38 being on the right bank of Bayou Teche at low water; thence on a line bearing about 292 degrees true azimuth, following the low-water meander line of Bayou Teche, to a point about 10 feet from point number 1, thence on a line bearing 212 degrees 01 minute true azimuth about 10 feet to monument at point and place of beginning; said lot or strip or tract of land being 300 feet wide and extending from Bayou Teche on the east to Bayou Portage on the west and containing the Hanson Canal, a complete through waterway, all as shown on map "R. & S. 25/17" of survey of Hanson Canal by W. B. Smith, Jr., Junior Engineer, in June, 1913, hereto attached and made part thereof.

The locks constructed in the canal and the lock gates and all appurtenances incidental thereto, and all other real property located on the strip of land of 300 feet width, except the M. L. & T. R. R. & S. S. Company railway bridge, the Iberia St. Mary & Eastern Railway bridge, and one Highway Bridge.

It is further ordered, adjudged and decreed that all rights, ways, privileges, servitudes, and appurtenances connected with the aforesaid property as hereinbefore described shall also vest in plaintiff, the United States of America, upon payment by it of the sum aforesaid.

Judgment rendered July 21st, 1920.
Judgment signed August 20th, 1920.
(Signed) RUFUS E. FOSTER,
Judge."

41 *Petition for Writ of Error.*

Filed August 20, 1920.

In the District Court of the United States for the Eastern District of Louisiana, New Orleans Division.

UNITED STATES OF AMERICA

versus

ALBERT HANSON LUMBER COMPANY, LIMITED, et al.

To the Honorable Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana:

Now comes Albert Hanson Lumber Company, Limited, by its attorneys and respectfully shows that on the 21st day of July 1920, the Jury duly impaneled and found a verdict against your petitioner and in favor of the United States of America, and upon said verdict a final judgment was entered on the 20th day of August 1920, against your petitioner.

Your petitioner, feeling itself aggrieved by the said verdict and judgment entered thereon as aforesaid, herewith petitions the Court for an order allowing it to prosecute a writ of error to the Circuit Court of Appeals of the United States for the Fifth Circuit under the laws of the United States in such cases made and provided.

Wherefore, premises considered, your petitioner prays that a writ of error do issue, that an appeal in this behalf to the United States Circuit Court of Appeals aforesaid, sitting at New Orleans, in said circuit for the correction of the errors complained of and herewith assigned, be allowed and that an order be made fixing the
42 amount of security to be given by plaintiffs in error conditioned as the law directs, and upon giving such bond as may be required that all further proceedings may be suspended until the determination of said writ of error by the Circuit Court of Appeals.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Attorneys for Petitioner.

Order Allowing Writ of Error.

In the District Court of the United States for the Eastern District of Louisiana, New Orleans Division.

UNITED STATES OF AMERICA

versus

ALBERT HANSON LUMBER COMPANY, LIMITED, et al.

This 20th day of August, 1920, came the Albert Hanson Lumber Company, Limited, by its Attorney, and filed herein and presented to the Court its petition, praying for the allowance of a writ of error, an assignment of errors intended to be urged by it, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the plaintiff, Albert Hanson Lumber Company, Lim-
43 ited, giving bond according to law, in the sum of Ten Thousand Dollars ($10,000.00), which shall operate as a supersedeas bond.

(Signed) RUFUS E. FOSTER,
Judge.

Aug. 20-20.

Assignment of Errors.

Filed August 20, 1920.

UNITED STATES OF AMERICA

versus

ALBERT HANSON LUMBER COMPANY, LIMITED, et al.

Assignment of Errors.

On writ of error from the United States Circuit Court of Appeals, Fifth Circuit, to the District Court of the United States, Eastern District of Louisiana.

The Albert Hanson Lumber Company, Limited, plaintiff in error and defendant in this action, in connection with its petition for writ of error makes the following assignment of errors, which it avers occurred, in the trial and decision of said United States District Court, Eastern District of Louisiana, in this cause as follows:

First. The Court erred in over-ruling the exception of vagueness, generality, indefiniteness, and of inconsistency, of contrariness to the relief prayed for.

Second. The Court erred in over-ruling the exception of no cause or right of action to the petition filed in this cause.

44 Third. The Court erred in over-ruling the exception to the petition in this cause, in that the acts of Congress, to-wit; of March 2, 1907, March 3, 1909, February 27, 1911 and of July 25, 1912, each and all exhibit no authority of the Court or Jury of freeholders for condemnation and adverse taking of the lands or property mentioned in said petition, and in that these proceedings were and are without warrant of law.

Fourth. The Court erred by denying and over-ruling the motion to strike out so much of the allegations of the petition setting up an alleged contract of purchase and sale between the United States and plaintiff in error, of the property mentioned in the petition as a basis for the relief sought.

Fifth. The Court erred in over-ruling the exceptions filed to the petition, to the effect that said petition disclosed a misjoinder of causes of action.

Sixth. The Court erred in over-ruling the exception of no right or cause of action to the petition filed on this cause and in holding that the acts of Congress of March 2, 1907, March 3, 1909, February 27th, 1911, and July 25, 1912, did authorize these proceedings and in further holding that said laws of Congress did authorize the condemnation of the Hanson Canal the 300 foot strip adjoining said Canal; and the Court erred in failing to hold that said acts of Congress conferred no authority upon the Secretary of War or the United States, or this Court, to condemn the property mentioned in the petition.

Seventh. The Court erred in failing to hold that said acts of Congress of March 2, 1907, March 3, 1909, February 27, 1911,
45 and July 25, 1912, did not authorize the condemnation proceedings herein, or the adverse taking of the property mentioned in the petition and in all other respects, that each and all of said acts of Congress and these proceedings are void and in violation of the Fifth Amendment of the Constitution of the United States.

Eighth. The Court erred in over-ruling the objections made by plaintiff in error at the inception of the trial to any and all evidence or testimony and to said ruling plaintiff in error duly excepted at the time, and which objections were and are substantially to the effect that the acts of Congress of March 2, 1907, March 3, 1909, July 25, 1912, are violative of the Fifth Amendment of the Constitution of the United States and in other respects no provision is made by law or by said acts of Congress to condemn the three hundred foot strip mentioned in plaintiff's petition upon making just compensation, and further that each and all of said acts, does and did not warrant or authorize the condemnation and adverse taking of the property mentioned in plaintiff's petition.

Ninth. The Court erred in charging the Jury to return a verdict in favor of the defendant in error, the United States of America upon the conclusion of the introduction of all of the testimony introduced upon the trial of the case, in the following words:

GENTLEMEN:

"The question before you is to determine how much the Government should pay the defendant for this canal. The Government has the right to take it. The fact that their executive officers has brought this suit is conclusive on the question that it is to be
46 taken for a public purpose, and the simple fact that you have to find is the damage to the defendant, how much is that canal worth to him that he is going to be deprived of by the Government taking it over. That is all that there is to it." To which charge plaintiff in error duly excepted.

Tenth. The Court erred in instructing the Jury as follows, to-wit: "You cannot consider as an element of damages the inconvenience that they say they will have by the use of the canal together with other people. That is entirely too speculative, too remote, to form an element of damages. What you must endeavor to ascertain is the present actual damages that they would suffer, the damages, the compensation, that the government ought to pay for the taking over of this canal to be used by the public in connection with themselves and everybody else." And to which charge of the Court plaintiff in error duly excepted at the time.

Wherefore, petitioner in error prays that the judgment of the District Court of the United States for the Eastern District of Louisiana in this case entered, be reversed.

(Signed) EMMETT ALPHA,
(Signed) E. HOWARD McCALEB,
Attorneys for Plaintiff in Error.

47 *Supersedeas Bond.*

Filed August 20, 1920.

Know all men by these presents, That we, Albert Hanson Lumber Company, Limited, as principal, and Southern Surety Company, as surety, are held and firmly bound unto United States of America in the full and just sum of Ten Thousand ($10,000.00) Dollars to be paid to the said United States of America certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 20 day of August, 1920, in the year of our Lord, one thousand nine hundred and twenty.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a

uit depending in said Court, between United States of America and Albert Hanson Lumber Company Limited, et al., No. 16242, of the docket of the United States District Court, Eastern District of Louisiana, a judgment was rendered against the said Albert Hanson Lumber Company, Limited, and the said Albert Hanson Lumber Company, Limited, having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

48 Now, the condition of the above obligation is such, that if the said Albert Hanson Lumber Company, Limited shall prosecute writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) ALBERT HANSON LUMBER CO., LTD. [SEAL.]
(Signed) By E. HOWARD McCALEB, *Its Attorney.* [SEAL.]
(Signed) SOUTHERN SURETY COMPANY. [SEAL.]
(Signed) J. H. BODENHEIMER, *Agent and Attorney-in-fact.*

Sealed and delivered in the presence of—

(Signed) J. LESLIE WITT,
(Signed) H. M. GROUT.

Approved by

(Signed) RUFUS E. FOSTER, *Judge.*

(4 documentary stamps cancelled.)

49 *Bill of Exceptions No. 1.*

(Filed November 12th, 1920.)

United States District Court, Eastern District of Louisiana.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LIMITED, et als.

United States District Court for the Eastern District of Louisiana, New Orleans Division, May Term, 1920.

Bill of Exceptions.

Be it remembered, that on the trial of this cause in this Court at the May term, A. D. 1920, of said Court, the Honorable Rufus E. Foster, Judge presiding, when the following proceedings were had, to-wit: A jury of freeholders was empaneled and sworn according to law, and thereupon the plaintiff to sustain the issue on its part offered in evidence the act of April 24th, 1888, Chapter 134, 25 Statutes, page 94, and thereupon the defendant to sustain issue upon its part then through its Counsel objected to said offer and to the offer of all evidence in this case on the ground:

First. That the acts of Congress of March 2, 1907, U. S. Stat. at L. Vol. 34, p. 1089-Chap. 2509, entitled an Act making an appropriation for improving inland waterway channel from Franklin to Mermentau, Louisiana, exhibits no authority in the United States or this Court for condemnation and adverse taking of the Hanson
50 Canal, or any other property belonging to respondent, mentioned in the petition, or otherwise, and therefore these proceedings should be dismissed. That the eastern terminus of the Hanson Canal is located about 3½ miles North and from the corporate limits of Franklin, Louisiana, and extends in a westerly direction to Bayou Portage, and accordingly no right or authority is vested in the United States Court or this Court, nor is any provision made by law to condemn or take the said Hanson Canal and other property of Respondent, as is proposed in these proceedings. That further, said act of March 2, 1907, gives no authority to condemn any existing canal, either at or within the corporate limits of the Town of Franklin, or anywhere else, by reason whereof no authority is or was vested by Congress in the United States Court, for the condemnation of said Hanson Canal, or other property of your respondent mentioned in plaintiff's petition.

That by act of Congress of March 3, 1909, 35 U. S. Stat. at L. Chap. 264, pages 815-816, the location of the eastern terminus of

said proposed Inland Waterway Channel from Franklin to Mermentau, adopted by Congress under the said act of Congress of March 2, 1907, was authorized to be changed from the Town of Franklin on Bayou Teche to such other point on said Bayou as the Secretary of War may select, provided that the modification therein authorized shall not be made unless a valid title of the necessary right of way be secured to the United States, free of cost.

That said act of 1909, exhibits no authority in the United States or in this Court to condemn the Hanson Canal or the 300 foot strip owned and possessed by respondent adjacent to the right of way and eastern terminus of the Hanson Canal, in that said act, and these proceedings are in violation of the Fifth Amendment of the
51 Constitution of the United States, and in that no provision is made by law to condemn said strip, upon paying just compensation to respondent.

That by act of Congress of July 25, 1912, 37 U. S. Stat. at L. Chap. 253, pages 201-212, the Secretary of War was authorized to purchase, for the use as a part of said Waterway, the Hanson Canal, at a cost not to exceed $65,000.00, in accordance with the recommendation made by the Chief Engineer. That the Chief Engineer had recommended in House Document 610, 63rd Congress 2nd Session, four distinct or alternative routes from Bayou Teche to Mermentau, at pages 42 and 45 of said Document 610, each alternative route having its eastern terminus as follows One at Franklin; one at Centreville; one at Jeanerette and one at Hanson Canal. That said Engineer recommended the Hanson Canal route having for the eastern terminus of said waterway the head or lock end of the Hanson Canal as the best route, the Centreville route having for its eastern terminus the Town of Centreville on Bayou Teche as the second best, Franklin as the third best, and Jeanerette as the fourth best. That Congress accordingly adopted the recommendation of the Chief Engineer, provided that said Hanson Canal could be purchased for not less than the sum of $65,000.00 and provided further under the act of March 3, 1909, all other right of way which included the 300 foot strip adjacent to said Hanson Canal, be acquired by the United States, free of cost to it. That said acts of Congress of July 25, 1912 and of March 3, 1909, authorizing a change of route or eastern terminus from Franklin to any other point on Bayou Teche, conferred only a power to purchase the said Hanson Canal and a power to acquire by gift said 300 foot strip, and conferred no authority on the Secretary of War or this Court to condemn, either the Hanson Canal or said 300 foot strip belonging to petitioner, and fur-
52 ther that said acts and these proceedings are in violation of the Fifth Amendment of the Federal Constitution in that, no provision by Congress is made for just or adequate compensation.

Which objection was over-ruled, to which ruling defendants Counsel excepted, then and there in the presence and hearing of the Jury, and took this bill of exceptions; the over-ruling of said objection

and the exceptions allowed being then and there declared by the Court to run to all of the testimony and evidence in the case.

During the trial, and in the presence and hearing of the Jury, the defendant in support of the issue presented by it (and of the foregoing objections), offered the testimony of Walter Y. Kemper, the witness duly sworn on behalf of the defendant tending to show, (and which testimony was admitted and filed in evidence), that the Hanson Canal together with said 300 foot strip herein sought to be condemned was situated and located between the Town of Franklin and the Town of Centreville about three miles North and from the Town of Franklin, Louisiana and extends in a westerly direction to Bayou Portage, which said Hanson Canal has its Eastern terminus on Bayou Teche, that the said 300 foot strip adjoins and runs along the entire length of said Hanson Canal, that said Hanson Canal has an average width of 40 feet, 37 feet wide at its narrowest point, 30 feet wide on its locks, and about 8 feet deep; that respondent and exceptor offered, introduced and filed in evidence on the trial and in the presence and hearing of the Jury, and in connection of the testimony of said Walter Y. Kemper, maps and diagrams of said Hanson Canal sworn to by said Walter Y. Kemper as
53 correct by showing and delineating the situs in quo. Which maps and diagrams of said Hanson Canal and of said 300 foot strip, are annexed to and made part of this bill of exceptions. That defendant through its Counsel further offered, introduced and filed in evidence at the trial and in the presence of the Jury, House Document No. 610, House of Representatives 63rd Congress 2nd Session, showing a letter from the Secretary of War, transmitting the report of the Board of United States Engineers, relative to the Intracoastal Waterway and referred to in the Act of Congress of July 5, 1912, particularly page 16 of said report, paragraph 19, and the remaining portion of paragraph 19 on page 17 of said report.

Respondent further offered in evidence said House Document 610, 63rd Congress 2nd Session, particularly that portion of the report on pages 42 and 45, down to the end of the first paragraph on 46, being the report of the Chief Engineer, in the letter addressed by the Secretary of War, which said report was referred to in the act of Congress of July 25, 1912; and said defendant further offered in evidence through its Counsel the letter of the Secretary of War of date February 1, 1917, being House Document No. 640 of the 59th Congress 2nd Session, and referred to in the act of Congress of March 2, 1917, being the letter of the Secretary of War transmitting the report of examination of project for interior waterway, from the Rio Grande to the Mississippi which said reports so offered, introduced and filed in evidence and made part of the acts of Congress of March 2, 1907, and of July 25, 1912, are made part of this bill of exceptions, for greater certainty.

That from the report contained in Document No. 610, 63rd Congress 2nd Session, the following appears on pages 42 and 45.

54 "Intracoastal Waterway,

St. George Sound to the Rio Grande Section.

63rd Congress, 2nd Session.

Document No. 610.

Bayou Teche to the Mermentau River.

Pages 42 and 45.

The fourth line leaves the Teche by the Hanson Canal about 3 miles below Franklin, thence by Bayou Teche, Bayou Bartholomew, Bayou Chicot, to Hog Bayou, and thence through the marsh to Weeks Bayou and Bayou Carlin, the total distance being 24.5 miles.

The fifth route starts from the Teche in vicinity of Centreville and proceeds on a straight line for about 1 mile to Thorgerson's drainage canal, following this canal for a distance of 5½ miles to Beaus Bayou, thence by Beaus Bayou, Birch Bayou to Bayou Bartholomew, thence by the same line as the *proceeding* route, the total length being 29 miles.

Each one of these routes, except the fourth, will require the construction of a lock at a point of departure from the Teche, of one double-track swing bridge in the Southern Pacific Railroad, of two plantation railroad bridges, and about three highway bridges. A lock exists on the Hanson Canal, and this route will require a double-track railroad swing bridge and a highway swing bridge only. The first three will each require the erection of one single-track railroad bridge in addition to the structures named above.

The board regards the Hanson Canal route as the best between Bayou Teche and Bayou Carlin, after which it believes the Centreville, Franklin and Jeanerette routes advisable in the order
55 named. The cost of the New Iberia route is practically the same as that of the Jeanerette Route, but the distance for all vessels bound to the Atchafalaya and the Mississippi River is several miles more by New Iberia than by Jeanerette. Both the New Iberia and Jeanerette routes have the disadvantage over those entering the Teche at Franklin or below, of requiring all boats to traverse the large bends in the Bayou between Jeanerette and Franklin. A route from the Teche at Baldwin above Franklin would involve about the same excavations as a line from the latter point, but the long bend in the bayou between these points makes it less desirable. The line by way of the Hanson Canal offers the shortest route. The distance from Bayou Carlin to the mouth of Bayou Teche by the different routes *are:* New Iberia route 66½ miles; Jeanerette, 58 miles; by Franklin, 42 miles; the Hanson Canal, 38 miles; and by Centreville, 41 miles. The lock on the Hanson Canal was built for rafting purposes and is of excessive length, but as it is believed that it will answer all purposes for several years to come, no esti-

mate is included for rebuilding it. A new lock of slightly greater width would cost the same as on the other routes—that is, about $50,000.00.

The Board recommends the construction of a waterway 7 feet deep with a bottom width of 75 feet from the Teche to the Mermentau along the line given, preferring the Hanson Canal route for the portion between the Teche and Mayou Carlin, but should that not prove practicable, it regards the Centreville route as next desirable and the Franklin and Jeanerette routes as next in order of desirability. The advantages of this waterway are quite fully set forth in Maj. Jadwin's report above mentioned. (Doc. 640, 59th Congress.)"

56 And the defendant prays that this its bill of exceptions may be allowed, settled and signed, and sealed.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Counsel for Defendant.

Settled and allowed this 12th day of November, A. D. 1920, in term.

(Signed) RUFUS E. FOSTER,
Judge.

Bill of Exceptions No. 2.

(Filed November 12th, 1920.)

United States District Court, Eastern District of Louisiana.

No. 16242.

UNITED STATES OF AMERICA

VS.

ALBERT HANSON LUMBER COMPANY, LIMITED, et als.

United States District Court for the Eastern District of Louisiana, New Orleans Division, May Term, 1920.

Bill of Exceptions.

Be it remembered, that on the trial of this cause in this Court at the May term, A. D. 1920, of said Court, the Honorable Rufus E. Foster, Judge presiding, when the following proceedings were had, to-wit: A jury of freeholders was empaneled and sworn according to law, and thereupon the plaintiff to sustain the issue on its

57 part offered in evidence a resolution of the Board of Directors of the Albert Hanson Lumber Company, Ltd., the date of the resolution being September 29th, 1913, which resolution being produced and examined by Counsel for defendant and which said resolution reads as follows:

"Whereas, by an Act of Congress approved March 22nd, 1907, entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors and for other purposes," provision was made for improving inland waterway channel from Bayou Teche to Mermentau, Louisiana, and whereas Congress, by act approved July 25th, 1912, provided as follows: "Improving waterway from Franklin to Mermentau, Louisiana; the Secretary of War is hereby authorized to purchase for use as a part of said waterway the so-called Hanson Canl, in accordance with the recommendation made by the chief engineers at a cost not to exceed sixty-five thousand dollars to be paid out of funds heretofore appropriated for this project; *and whereas,*

And whereas the Hanson Canal, which is owned by the Albert Hanson Lumber Company, extends through that portion of the route of said inland waterway hereafter described,

And whereas it is necessary for the United States to have and own a right of way three hundred feet in width in order to improve and enlarge said canal and make the same a part of the said inland waterway; *and*

And whereas the United States Government has proposed and agreed to purchase the said Hanson Canal for $65,000.00 from the Albert Hanson Lumber Company Limited including a 300
58 foot right of way and all locks and other constructions, for the improvement of said canal and also all other constructions and encumbrances located on said right of way, except Morgan's Louisiana and Texas Railroad & Steamship Company railway bridge, the Iberia St. Mary & Eastern Railway Company railway bridge, and one highway bridge;

Now therefore, upon the payment of said sum of $65,000.00, as compensation for the said canal and locks and other constructions therein, and as the price and consideration for the necessary three hundred feet right of way, T. Cheney Lawless, Vice-President of the Albert Hanson Lumber Company, being the chief executive officer of this corporation since the death of its president, is hereby authorized and empowered to grant, convey, donate, transfer, assign and set over, in the name and on behalf of the Albert Hanson Lumber Company, to and unto the United States of America and its assigns, all of the property designated and described as" — here follows the description of property.

Be it further resolved that the locks constructed in said Hanson Canal and the lock gates and all appurtenances incidental thereto, and all other real property located on the right of way of 300 feet width, except the M. L. & T. R. R. & S. S. Company railway bridge, the Iberia, St. Mary & Eastern Railway bridge and one highway bridge, shall form part of the grant and become the property of the United States.

Be it further resolved that until the United States shall make actual payment and take actual possession of the said canal and right of way, the grantor, the Albert Hanson Lumber Company, Limited, shall have and retain the right to control, occupy and use any and all portions of the above described strip of land 300 feet wide, and keep trespassers off of it.

59 Be it further resolved that the grantor, the Albert Ha
Lumber Company, Limited, shall have and retain the
to remove all of the trees and timber growing on or being on
banks of the said canal on the above described strip of land 300
in width, for a period of six months from the date of the actual
ment and possession by the United States, provided the remov
such trees and timber is not required by the United States befor
expiration of the said six months, and provided further that
the expiration of the said six months the timber still remaining
belong to the United States.

Be it further resolved that the grantor, the Albert Hanson L
ber Company, Limited, and its asigns, shall always have and e
the free access, ingress and egress to and from the said Hanson C
through the lateral canals now constructed and used by the A
Hanson Lumber Company, Limited, in its timber operations
lumber business and for all such commercial purposes as the
lateral canals may be used for hereafter, even after the said Ha
Canal shall have been converted into a public inland waterway,
vided said use of the canal is not contrary to or different from th
public navigable highways, and provided said use shall be under
regulations as may be prescribed by the Secretary of War.

I hereby certify that the above and foregoing is a true and co
and complete copy of the original resolutions of the Board o
rectors of the Albert Hanson Lumber Company, Limited, w
was adopted unanimously at the meeting of said Board of Direc
held at the office of this said corporation, at Franklin, Louisian
the 29th day of September A. D. 1913. In faith whereof
60 ness my official signature and the impress of the corp
seal of the said Albert Hanson Lumber Company, Lim
at the Company's office, in Franklin, Louisiana, this 29th da
September A. D. 1913.

PETER CHERRY,
Secretary of the Albert Hanson Lumber Company, Limited

Thereupon Counsel for defendant objected to the introductio
said resolution, on the ground, that this is a condemnation pro
ing and not an action to compel specific performance; and tha
issue in this case presented by the defendant raises issues, cogni
only in equity, which are triable only by the Court sitting
Court of Equity, prior to any trial of the law issues before or by
Jury, and asked that the Court sitting as a Chancellor in Eq
determine the equity issues raised by the defendant's answe
plaintiff's petition, prior to a trial of the law issues; that defen
by its Counsel further objected on the ground that said resolu
constitutes an attempt to compromise with the United State
September 9th, 1913, with respect to the acquisitions of the tit
said property by the United States in accordance with the offer o
act of Congress of July 25th, 1912, authorizing the purchase of
Hanson Canal for the price and sum of not more than $65,000.0
Which objection was over-ruled, to which defendant's Cou

then and there in the presence and hearing of the Jury excepted, took this bill of exceptions.

Defendant prays that this bill of exceptions be duly allowed, settled, signed and sealed.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Counsel for Defendant.

61 *Order.*

Settled and allowed this 12th day of November 1920, in term.
(Signed) RUFUS E. FOSTER,
Judge.

Bills of Exception No. 3.

(Filed November 12th, 1920.)

United States District Court, Eastern District of Louisiana.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LIMITED, et als.

United States District Court for the Eastern District of Louisiana, New Orleans Division, May Term, 1920.

Bill of Exceptions.

Be it remembered, that on the trial of this cause in this Court at the May term, A. D. 1920, of said Court, the Honorable Rufus E. Foster, Judge presiding, when the following proceedings were had, to wit: A Jury of freeholders was empaneled and sworn according to law, and thereupon the plaintiff to sustain the issue on its part offered in evidence the original letter written by the Albert Hanson Lumber Company, Limited, Garden City, Louisiana, dated
62 July 10th, 1916, which is a reply to a letter from Major Edward H. Schulz, Corps of Engineers, was offered in evidence and read to the Jury as follows:

"Replying to yours of the 8th, we will not consider your proposition to reduce the price of the Hanson Canal from $65,000 because of any controversy that has arisen between your office and the Iberia & Northern Railroad regarding the matter of a draw in their bridge across said canal. We note that you state that the Department of Justice considers that the New Iberia & Northern Railroad probably has some title to right of way crossing our canal. We think, after considering the matter very carefully, that it was never possible for us to prevent them crossing, as the Louisiana laws allow railroad

corporations, as common carriers, to expropriate land etc. for their rights of way and have the Courts fix the value etc. of such rights of way; therefore, no form of protest from us would have altered the present status of the New Iberia & Northern railroad crossing the Hanson Canal. The Southern Pacific Railroad Co. is quite a different matter, and we had to acquire from them the right of way for our canal under and across their roadbed and tracks. The Louisiana laws did not then, and *does* not now, allow us to expropriate for a canal for private use, and we had to comply with the requirements of the Southern Pacific Co. named as a consideration for granting such right of way for our canal. We feel that the United States Government is in supreme authority over navigable streams and that it is possible for the government to compel the New Iberia & Northern Railroad to build a drawbridge across the Hanson Canal as soon as the United States completes the purchase of the canal. We
63 will, under no circumstances, alter the figures of $65,000.00 for the sale of the canal, and feel sure that, after considering the matter, you will realize that our price is very consistent with the values and advantages that the route of the Hanson Canal affords the Intercoastal Water Way. It will be very difficult to locate another line which will be as desirable, as we are decidedly offering the logical route."

To which offer Counsel for defendant objected, on the grounds stated in bill of exceptions number one, and on the further ground that this is a condemnation proceeding, and not an action to compel specific performance in equity, and that the issue presented in this case by petitioner raises issues cognizable only in Equity, which are triable by the Court sitting as a Court of Equity, prior to any trial of the law issues before or by the Jury; and Counsel for defendant thereupon prayed that the Court sitting as a Chancellor in Equity would determine the Equity issues raised by the defendant's answer to plaintiff's petition, prior to a trial of the law issues which prayer was then and there refused by the said trial Judge to which refusal of the Court Counsel for defendant then and there before the Jury retired excepted; and defendant by its Counsel then and there further objected on the ground that said letters of Major Schulz and of the Albert Hanson Lumber Company, Limited, constitutes and tends merely to prove an attempt to compromise with the United States on July 10th, 1916, with respect to the purchase of the Hanson Canal by the United States in accordance with the offer of the acts of Congress of July 25th, 1912, authorizing the purchase of the said Hanson Canal for the price and sum of not more than $65,000.00.

64 Defendant accordingly now prays that this its bill of exceptions may be allowed, settled, signed and sealed.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Counsel for Defendant.

Settled and allowed this 12 day of November, 1920, in term.

(Signed) RUFUS E. FOSTER,
Judge.

Bill of Exceptions No. 4.

(Filed November 12th, 1920.)

United States District Court, Eastern District of Louisiana.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LIMITED, et als.

United States District Court for the Eastern District of Louisiana, New Orleans Division, May Term, 1920.

Bill of Exceptions.

Be it remembered, that on the trial of this cause in this Court at the May term, A. D. 1920, of said Court, the Honorable Rufus E. Foster, Judge presiding when the following proceedings were had, to wit: A Jury of freeholders was empaneled and sworn,
65 according to law, and thereupon the United States to sustain the issue on their part offered in evidence the testimony of Major E. J. Dent, of the Corps of United States Engineers, District Engineer officer in charge, and the said Major Dent being on the witness stand and duly sworn as a witness for plaintiff and was asked by plaintiff's Counsel, the following question, to wit: "In your negotiations with the Albert Hanson Lumber Company concerning this canal, did they ever protest against the necessity for the use of this canal, in connection with this proposed public waterway, as to its necessity for that use?"

To which question Counsel for defendant then and there in the presence and hearing of the jury objected on the ground, that the question of necessity vel non is one for the Congress and not for the Department of War.

Which objection was over-ruled, and said witness being directed and required by the Court to answer said question, answered said question and substantially testified to the effect that the taking was necessary, to which ruling defendant's Counsel then and there excepted, and took this bill of exceptions which is accordingly now allowed, settled, signed and sealed.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Counsel for Defendant.

Settled and allowed this 12 day of November, 1920 in term.

(Signed) RUFUS E. FOSTER,
Judge.

66 *Bill of Exceptions No. 5.*

(Filed November 12th, 1920.)

United States District Court, Eastern District of Louisiana.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LIMITED, et als.

United States District Court for the Eastern District of Louisiana, New Orleans Division, May Term, 1920.

Bill of Exceptions.

Be it remembered, that on the trial of this cause in this Court at the May term, A. D. 1920, of said Court, the Honorable Rufus E. Foster, Judge presiding, when the following proceedings were had, to-wit: A Jury of freeholders was empaneled and sworn according to law, and thereupon the defendant to sustain the issue on their part offered in evidence the testimony of W. B. Smith, and on cross examination the said W. B. Smith being on the witness stand and duly sworn as a witness for defendant, was asked by plaintiff's Counsel the following question, to-wit: "Now you know that by the act under which the intracoastal Canal is to be constructed there would probably be something in excess of $50,000.00 for the improvement of the Hanson Canal, if taken over by the Government."

To which question Counsel for defendant then and there in the presence and hearing of the Jury objected on the ground
67 that any fund or other sums of money which the Government might have for the improvement of the Intrasoastal Canal with respect to the expenditures of said fund is a matter within the discretion of the War Department. That the evidence sought to be elicited from the witness, by the question propounded by the Attorney for the plaintiff, constitutes a matter of intention as to the future disposition of funds, and that the same may or may not be expended, and hence the discretion of the War Department cannot affect the actual damages or inconveniences arising from the taking of the Hanson Canal by these condemnation proceedings.

Which objection was overruled and said witness being directed and required by the Court to answer said question did depose and say in answer to said question, as follows, to-wit: "there was an excess of over $65,000.00," to which ruling defendant's Counsel then and

ere excepted, and took this bill of exceptions which is accordingly ow allowed, settled, signed and sealed.

(Signed) EMMET ALPHA,
" E. HOWARD McCALEB,
Counsel for Defendant.

Settled and allowed this 12 day of November, 1920 in term.

(Signed) RUFUS E. FOSTER,
Judge.

8 *Bill of Exceptions No.* 6.

(Filed November 12th, 1920.)

United States District Court, Eastern District of Louisiana.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LIMITED, et als.

United States District Court for the Eastern District of Louisiana, New Orleans Division, May Term, 1920.

This is an action for the condemnation of the Hanson Canal and a 300 foot strip of land adjoining said Canal instituted by the United States of America against the Albert Hanson Lumber Company, Limited. The defendant, Albert Hanson Lumber Company, Limited, interposed and filed certain exceptions to plaintiff's petition and a motion to strike out, which exceptions were overruled by the Court and the motion to strike out denied.

The case came regularly on for trial on the 19th day of July, 1920, before the Honorable Rufus E. Foster, District Judge, Henry Mooney, United States District Attorney, and J. D. Dressner, Special Counsel for the United States, and Emmet Alpha and E. Howard McCaleb, Attorneys and Counsel for defendant, Albert Hanson Lumber Company, Limited.

The Jury having been empaneled and sworn the following proceedings were had and testimony taken.

The petition was read to the Court and Jury by Counsel for plaintiff and the answer was read to the Court and Jury by Counsel for defendant, and thereupon to sustain the issue upon the part
69 of plaintiff and on the part of defendant, plaintiff and defendant offered evidence and testimony as follows, the whole entirety of the said evidence for plaintiff and for defendant, was as follows, to-wit:

The foregoing being all the evidence in the case, both parties rested and the case was argued to the Jury by the respective parties. The Court then proceeded to charge the Jury.

Now be it remembered that, in the course of the charge to the Jury the Court instructed the Jury as follows: "The question before you is to determine how much the Government should pay the defendant for this Canal. The Government has a right to take it."

To which said portion of said charge Counsel for defendant then and there in the presence and hearing of the Jury duly excepted on the grounds set forth at large in bills of exception No. 1, filed and allowed by the Court and made part hereof for greater certainty, and further that there is no law of Congress authorizing the condemnation of the Hanson Canal and no law of Congress authorizing the condemnation of said 300 foot strip upon the payment of just compensation. Whereupon, this the defendant's bill of exception is now accordingly allowed, sealed and signed.

Be it further remembered that the Court further instructed the Jury as follows: "The fact that their executive officers (meaning the executive officers of the Government) have brought this suit is conclusive on the question that it is to be taken for a public purpose."

To which said portion of said charge Counsel for defendant then and there in the presence and hearing of the Jury and took this bill of exception to said ruling. Whereupon this, defendant's bill of exception is now acordingly allowed, sealed and signed.

70 Be it further remembered that in the course of the charge to the Jury the Court instructed the Jury as follows: "You cannot consider as an element of damages inconvenience that they say they will have by the use of the Canal together with other people. That is entirely too speculative, too remote to form an element of damages. What you must endeavor to ascertain is the present actual damages that they would suffer, the damages that the Government ought to pay for the taking over of this Canal to be used by the public in connection with themselves and everybody else."

To which said portion of said charge Counsel for defendant then and there in the presence and hearing of the Jury duly excepted and took this bill of exception on the ground that said portion of said charge tended to mislead the Jury, and on the further ground that there was evidence tending to show that the damage or inconvenience that would be suffered by the defendant, by reason of the condemnation of said Canal were neither remote nor speculative but real and continuing in case of the condemnation of said property, and therefore constituted actual damages. And on the further ground that said portion of said charge denies the act of interference by the public as an element of damages that results immediately from the taking. Whereupon this, the defendant's bill of exception is now accordingly allowed, sealed and signed.

Be it further remembered that the Court further instructed the Jury as follows: "Coming to consider the value. You have heard what it cost to dig, which it would cost to dig it now, this contract that they made to sell it, and the reasons that induced them to make the contract. All that evidence you will consider, but you can also consider your own knowledge of human affairs, and your

own special knowledge that may appertain to this particular
71 part of the country, or anything that men such as yourselves, living out there, ought to know.

Now you are not bound by the $65,000 that they agreed to; if you think they ought to get more than that, why you can award them more than that. If you think they ought to get less than that, you can award them less."

To which said portion of said charge Counsel for defendant then and there in the presence and hearing of the Jury duly excepted, and took this bill of exception to said ruling on the ground, that said portion of said charge was misleading, there being undisputed and uncontradicted evidence tending to show that the present cost of digging or excavation of the Hanson Canal aside from any other cost or damage, is the sum of $64,400, and the total present cost of reproducing said canal is the sum of $152,000, and undisputed evidence that in September, 1913, the defendant proposed to accept the sum of $65,000 from plaintiff for said Canal and 300 foot strip, under conditions specified in the Resolution of the Board of Directors of defendant and specifically set out in Bill of Exception No. 2, and on the further ground that the effect of said portion of said charge was to confuse the minds of the Jury on the issue before them; and on the further ground that undue prominence and special stress was given to the cost of digging, ignoring reference to the necessary present cost of reproduction and necessary appliances, and undue emphasis to the so-called contract of sale and the reasons that induced defendant to make said so-called contract, thereby tending to divert the Jury's attention from the undisputed and uncontradicted evidence as to the cost of reproducing said Canal at the present time and upon which a correct verdict might be
72 arrived at; on the further ground that the denomination of the resolution of the Board of Directors of defendant and the negotiations between plaintiff and defendant looking to the acquisition of said Hanson Canal by private purchase as a contract tended to excite passion and prejudice in the minds of the Jury against defendant as though defendant was a party seeking to withdraw from its contract

Whereupon this defendant's bill of exception is now accordingly allowed, sealed and signed.

And now in furtherance of Justice and that right may be done, the defendant, Albert Hanson Lumber Company, Limited, presents the foregoing as a bill of exception in this case, and prays that the same may be settled, allowed, signed and certified by the Judge as provided by law, and the same is accordingly allowed, sealed and signed as of date July 21st, 1920.

(Signed) RUFUS E. FOSTER,
Judge.

Nov. 12/20.

United States District Court, Eastern District of Louisiana.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LTD., et als.

Proceedings Had on the Trial of the Above Entitled and Numbered Cause Before the Hon. Rufus E. Foster, Judge, and a Jury, on the 19th, 20th and 21st Days of July, 1920.

73 Appearances:

Henry Mooney, Esq., U. S. District Attorney, and J. D. Dresner, Esq., for the United States.

Emmet Alpha, Esq., and E. H. McCaleb, Esq., for the Defendant.

Offer.

Mr. Dresner: We desire to offer in evidence on behalf of the Government the act of April 24, 1888, Chapter 194, 25 Statutes, page 94, which reads as follows——

The Court: You don't have to offer that in evidence.

Objection.

Mr. M'Caleb: Counsel for the defendant, Albert Hanson Lumber Company, objects to the offer of all evidence in this case on the ground

First, that the petition is too general, vague and indefinite, the allegations inconsistent with and contrary to the relief prayed for

Second, that said petition discloses no right or cause of action, and that the same, and the acts of Congress, exhibit no authority on the Court or the jury of freeholders for condemnation of the land or property mentioned in said petition, and therefore the said proceeding is without warrant of law;

Third, on the grounds stated in the motion to strike out filed in this case;

Fourth, on the ground that there is a misjoinder of causes of action;

74 Fifth, the defendant also objects to any evidence in the case, on the ground that the act of March 2nd, 1907, is only an appropriation for improving an inland waterway channel from Franklin to Mermentau, Louisiana, and that this act exhibits no authority in the Court to condemn or take the Hanson Canal or the

said 300 foot strip and constructions thereon, inasmuch as said act of March 2nd, 1907, refers to a proposed waterway in and from the town of Franklin and at no other terminus on Bayou Teche, and, further, that as the Hanson Canal is located outside of the corporate limits of the town of Franklin, having its eastern terminus on Bayou Teche, extending in a westerly direction to Bayou Portage, there is no authority vested in this Court or in the Secretary of War or in this jury, nor is there any provision made by law for the condemnation and taking of said Hanson Canal and the 300 foot strip and other property mentioned in the petition;

Sixth, defendant further objects to any and all evidence on the ground that the act of Congress of March the 3rd, 1909, which authorizes a change from the eastern terminus of the Franklin Canal, from the town of Franklin to the head of the Hanson Canal or any other point on Bayou Teche provided that the rights of way and property must be secured by the United States free of cost, and that therefore these proceedings and the attempted condemnation of the 300 foot strip owned and possessed by defendant adjacent to the right of way of the Hanson Canal, are void and in violation of the Fifth Amendment of the Federal Constitution in that no provision is made for the condemnation of said strip upon paying just compensation.

75 Seventh, Counsel for defendant objects further to any and all evidence on the further ground that, under the act of Congress of July 25th, 1912, the Secretary of War was only authorized to purchase the Hanson Canal for $65,000, which act of 1912 was carved out of the act of 1909, providing for the acquisition of property free of cost, and that, accordingly, said authority to purchase the Hanson Canal for the sum of $65,000 includes only power to purchase and not the right to condemn;

Lastly, that said act of Congress July 25th, 1912, and these proceedings are in violation of the Fifth Amendment of the Federal Constitution, in that no provision is made in said act for just or adequate compensation in the condemnation proceedings.

The Court: I will overrule your objections and let the objections run to all of the testimony.

Mr. M'Caleb: To which ruling of the Court I except and reserve a bill of exceptions.

Offer.

Mr. Dresner: On behalf of the United States, plaintiff herein, we offer, introduce and file in evidence the resolution of the Board of Directors of the Albert Hanson Lumber Company, the date of the resolution being September 29, 1913,——

The Court: Let me ask you—this is a resolution agreeing to sell the canal property as set out in your petition?

76 Mr. Dresner: Yes, sir.

Objection.

Mr. M'Caleb: I object on the ground that it is not proper before a jury of freeholders and that this is a condemnation proceeding and not an action to compel specific performance which is cognizable in equity, and, further, that the evidence sought to be introduced is irrelevant and incompetent.

The Court: It fixes what price they proposed to take?

Mr. Dresner: Yes, sir.

The Court: I think it is relevant. I will overrule the objection. It is introduced, gentlemen, not as showing there was any agreement for the sale of this property, because that has long since passed away, but simply in addition to all other evidence that you hear, that may aid you to make up your minds as to the value of the property.

Mr. M'Caleb: I except to the ruling of the Court and reserve a bill.

Mr. Dresner: "Whereas by an Act of Congress approved March 2nd, 1907, entitled "An act making appropriations for the construction, repair and preservation of certain public works on rivers and harbors and for other purposes," provision was made for improving inland waterway channel from Bayou Teche to Mermentau,
77 Louisiana, and whereas Congress, by act approved July 25th, 1912, provided as follows: "Improving waterway from Frankline to Mermentau, Louisiana; the Secretary of War is hereby authorized to purchase for use as a part of said waterway the so-called Hanson Canal, in accordance with the recommendation made by the chief of engineers at a cost not to exceed sixty-five thousand dollars to be paid out of funds heretofore appropriated for this project;" *and whereas*

And whereas the Hanson Canal, which is owned by the Albert Hanson Lumber Company, extends through that portion of the route of said inland waterway hereafter described;

And whereas it is necessary for the United States to have and own a right of way three hundred feet in width in order to improve and enlarge said canal and make the same a part of the said Inland Waterway; *and*

And whereas the United States Government has proposed and agreed to purchase the said Hanson Canal for $65,000.00 from the Albert Hanson Lumber Company, Limited, including a 300 feet right of way and all locks and other constructions, for the improvement of said canal, and also all other constructions and encumbrances located on said right of way, except Morgan's Louisiana & Texas Railroad & Steamship Company railway bridge, the Iberia, St. Mary & Eastern Railway Company railway bridge, and one highway bridge;

Now, therefore, upon the payment of said sum of $65,000, as compensation for the said canal and locks and other constructions therein, and as the prices and consideration for the necessary three hundred feet right of way, T. Cheney Lawless, Vice-President of the Albert Hanson Lumber Company, being the chief executive officer of
78 this corporation since the death of its president, is hereby authorized and empowered to grant, convey, donate, transfer, assign and set over, in the name and on behalf of the Albert Han-

son Lumber Company, to and unto the United States of America and its assigns, all of the property designated and described as"—here follows the description of the property.

Be it further resolved that the locks constructed in said Hanson Canal and the lock gates and all appurtenances incidental thereto, and all other real property located on the right of way of 300 feet width, except the M. L. & T. R. R. & S. S. Company railway bridge, the Iberia, St. Mary & Eastern Railway bridge and one highway bridge, shall form part of the grant and become the property of the United States.

Be it further resolved that until the United States shall make actual payment and take actual possession of the said canal and right of way, the grantor, the Albert Hanson Lumber Company, Limited, shall have and retain the right to control, occupy and use any and all portions of the above described strip of land 300 feet wide, and keep trespassers off of it.

Be it further resolved that the grantor, the Albert Hanson Lumber Company, Limited, shall have and retain the right to remove all of the trees and timber growing on or being on the banks of the said canal on the above described strip of land 300 feet in width, for a period of six months from the date of the actual payment and possession by the United States, provided the removal of such trees and timber is not required by the United States before the expiration of said six months, and provided further that upon the expiration of the said six months the timber still remaining shall belong to the United States.

79 Be it further resolved that the grantor, the Albert Hanson Lumber Company, Limited, and its assigns, shall always have and enjoy the free access, ingress and egress to and from the said Hanson Canal, through the lateral canals now constructed and used by the Albert Hanson Lumber Company, Limited, in its timber operations and lumber business and for all such commercial purposes as the said lateral canals may be used for hereafter, even after the said Hanson Canal shall have been converted into a public inland waterway, provided said use of the canal is not contrary to or different from that of public navigable highways, and provided said use shall be under such regulations as may be prescribed by the Secretary of War.

I hereby certify that the above and foregoing is a true and correct and complete copy of the original resolutions of the Board of Directors of the Albert Hanson Lumber Company, Limited, which was adopted unanimously at the meeting of said Board of Directors, held at the office of this said corporation, at Franklin, Louisiana, on the 29th day of September, A. D. 1913. In faith whereof witness my official signature and the impress of the corporate seal of the said Albert Hanson Lumber Company, Limited, at the Company's office, in Franklin, Louisiana, this 29th day of September, A. D. 1913.

PETER CHERRY,
Secretary of The Albert Hanson Lumber Company, Limited.

This resolution is certified by the Secretary of the Albert Hanson Lumber Company as being passed on the 29th day of September, 1913, and bears the seal of the corporation.

80 *Offer.*

Mr. Dresner: In connection with this offer, I desire to offer the original letter written by the Albert Hanson Lumber Company, Limited, Garden City, Louisiana, on June 10, 1916, which is in reply to a letter from Major Edward H. Schultz, New Orleans, Louisiana.

Objection.

Mr. McCaleb: If your Honor please, the objection originally made to the introduction of the resolution of the Board of Directors of the Hanson Lumber Company, Limited, shall apply to all evidence of a similar character, of which the two letters offered in evidence are one.

The Court: I will overrule your exceptions and reserve you a bill.

Mr. McCaleb: To which ruling of the Court, I except and reserve a bill.

Mr. Dresner: Before reading this letter of June 10th, I wish to read the letter to which this letter of June 10th is a reply, a letter of June the 8th, written by Edward H. Schultz, Major, Corps of Engineers, to Mr. T. C. Lawless, Vice-President, Albert Hanson Lumber Company, Garden City, Louisiana—I gave the date, June 8, 1916—"In connection with the contemplated purchase of the Hanson Canal, I beg to state that the Department of Justice considers that the New Iberia & Northern Railroad probably has some title to the right of way crossing your canal, and that it is doubtful whether the United States can compel this company to build a draw in their
81 bridge without compensation or payment. In view of this matter, it is especially requested that you consider the matter of reducing the amount of the purchase price from $65,000 to such figure as you feel inclined to set the property. The probable cost of the single track appears to be $30,000.00. Unless some reduction can be made, the matter will have to be referred to the War Department, and it is possible that another line for the Intercoastal Water Way will have to be investigated. Your early reply to this letter will be much appreciated."

Here is the reply. It is dated June 10, 1916, addressed to Major Edward H. Schulz, and signed by the Albert Hanson Lumber Company, by M. H. Lawless, President:

"Replying to yours of the 8th, we will not consider your proposition to reduce the price of the Hanson Canal from $65,000 because of any controversy that has arisen between your office and the Iberia & Northern Railroad regarding the matter of a draw in their bridge across said canal. We note that you state that the Department of Justice considers that the New Iberia & Northern Railroad probably has some title to right of way crossing our canal. We think, after

considering the matter very carefully, that it was never possible for us to prevent them crossing, as the Louisiana laws allow railroad corporations, as common carriers, to expropriate land, etc., for their rights of way and have the Courts fix the value, etc., of such rights of way; therefore, no form of protest from us would have altered the present status of the New Iberia & Northern railroad crossing the Hanson Canal. The Southern Pacific Railroad Co. is quite a different matter, and we had to acquire from them the right of
82 way for our canal under and across their roadbed and tracks. The Louisiana laws did not then, and does not now, allow us to expropriate for a canal for private use, and we had to comply with the requirements of the Southern Pacific Co. named as a consideration for granting such right of way for our canal. We feel that the United States government is in supreme authority over navigable streams and that it is possible for the government to compel the New Iberia & Northern Railroad to build a drawbridge across the Hanson Canal as soon as the United States completes the purchase of the canal. We will, under no circumstances, alter the figures of $65,000 for the sale of the canal, and feel sure that, after considering the matter, you will realize that our price is very consistent with the values and advantages that the route of the Hanson Canal affords the Intercoastal Water Way. It will be very difficult to locate another line which will be as desirable, as we are decidedly offering the logical route."

As I said, that is signed by the Albert Hanson Lumber Company.

Offer.

Mr. Dresner: We further offer in evidence on behalf of the Government a letter of the Albert Hanson Lumber Company, dated April 16, 1919. This letter is addressed to Colonel E. J. Dent, War Department, New Orleans, Louisiana.

"We are returning you herewith the two copies of deed which you sent us in re to transfer of our canal to the United States Government. We will not sign same, as we will not warrant the property
83 under the titles that Mr. Warren Foster held. We are not willing to make ourselves liable in any trouble that can, and that will in all probability, arise in the matter any time within the next fifteen years unless it is adjusted now. Our Mr. Lawless discussed this question with Mr. Lipsey in March, but we have had no information from any source as to what steps would be taken about it. We are led to believe from the fourth paragraph of your letter of the 14th, that you are in a position to overcome the defects in Mr. Warren Foster's title, and that you will require no further action from us in connection with clearing the same. If so, kindly advise us what has been done by you, as we will refuse to sign the deeds until we are very sure that we are fully protected. Regretting any disappointment our decision may cause you, and assuring you the delay in transferring of our canal to the United States government is under Mr. Foster's control and not ours, we are, yours truly."

Offer.

And annexed to that is a form of warranty deed, transferring our property, covered by the resolution, for the sum of $65,000.00, which, as the letter said, they refused to sign, and which we also offer in evidence in connection with that letter.

Offer.

Mr. Dresner: There is a letter of October 14, 1919, which we desire to offer in evidence on behalf of the government, written from the War Department and signed by the Assistant Secretary of War, addressed to the Honorable the Attorney General, reading:

"In the river and harbor act of March 2, 1907, Congress adopted a project——"

84 *Objection.*

Mr. McCaleb: I object to this letter, so much of this letter as refers to the fact that the project——

Mr. Dresner: The letter is only offered to show authority was given to institute the proceedings.

Mr. M'Caleb: If it is limited to that, I will have no objection.

Mr. Dresner: Will you admit we are duly authorized?

Mr. M'Caleb: Sure.

Mr. Dresner: It is admitted that the Department of Justice and the United States District Attorney for the Eastern District of Louisiana are duly authorized to institute these proceedings through a request of the Secretary of War, dated August 14, 1919.

Mr. M'Caleb: I am willing to admit the Secretary of War has requested the Department of Justice to bring this suit.

85 E. J. DENT, sworn and examined as a witness on behalf of the United States, testified as follows:

Direct examination.

By Mr. Dresner:

Q. What is your name or title in full?

A. Major E. J. Dent, Corps of Engineers.

Q. Are you familiar with the Hanson Canal property?

A. Yes.

Q. Do you know of your own knowledge whether the proposed condemnation of this canal is intended for public or private use?

A. I know that it is intended——

Objection.

Mr. M'Caleb: Objected to on the ground that the intention is a matter that is shown by the act itself and not by the testimony.

Mr. Dresner: May it please the Court, the Major is about to tell what his intention is.

Mr. M'Caleb: Oh, his intention?

A. The proposed condemnation is for public use.

Q. Will that canal be used by the Albert Hanson Lumber Company?

A. The Albert Hanson Lumber Company will be entitled to use the canal on precisely the same terms as any other party.

86 Cross-examination.

By Mr. Alpha:

Q. Under what terms or conditions will the Hanson Lumber Company be permitted to use the Canal in the event of its condemnation by the Court?

Mr. Dresner: If your Honor please, I suggest that is a matter of regulation which it is hardly possible for the Major at this time to testify on.

The Court: I think it is relevant. The question as to whether the Albert Hanson Lumber Company can continue to use this canal for their logging operations is very material in the question of damages.

A. Under the terms of the federal statutes, the Secretary of War is authorized to promulgate and enforce regulations in regard to the public use of public waterways. In this particular case, I am the District Engineer Officer, the local representative of the Secretary of War. When it becomes necessary to establish regulations for the public use of any public waterway, I may, on my own initiative, or on the initiative of someone else who makes the request that such action be taken, prepare a draft of regulations for the use of the waterway. That draft passes from my hands as a recommendation to various officers above me until it finally reaches the Secretary of War, who has the final right to approve or disapprove those regulations. In the particular case, no regulations have been drafted, as the canal is not yet a public waterway.

87 Q. Examine the letter purporting to have been issued or written by your office, dated June the 13th, 1920, and the two pages of proposed regulations attached thereto, and state whether or not the letter is signed by you, and whether or not the proposed regulations for the use of the Hanson Canal by the Hanson Company and the public are of your composition.

(Documents in question handed to witness. Witness examines same.)

A. The letter is genuine, signed by myself.

Q. What about the regulations attached to it?

A. These are the regulations that I attached to that letter.

Mr. Alpha (to the jury): These are the words of the letter and the proposed regulations attached to the letter.

"Mr. Emmet Alpha Franklin, Louisiana,"—the date of the letter being June 3, 1920—"Dear Sir:

1. Your letter of May 30, addressed to 'Department of Engineers, New Orleans, La.,' was delivered first to the Board of State Engineers, was sent by them to the United States Engineer Office, Fourth Mississippi River Commission District, 519 Canal Street, and was forwarded by that office to the undersigned.

2. It is evident that an error in transmission of the telegram was made. As received by us it asked for a copy of proposed legislation.

3. There is enclosed herewith a draft of possible regulations for use of the Hanson Canal, should the United States obtain
88 possession of that canal. It will be understood that this draft is tentative only and was prepared by this office as a basis for discussion.

4. If the Albert Hanson Lumber Company will not oppose the expropriation proceedings in connection with the Hanson Canal property, this office would be disposed to recommend to the Chief of Engineers that regulations substantially as proposed in the accompanying draft be agreed upon in advance, to take effect on the date that the United States obtains possession of the property.

Very truly yours,
(Signed) E. J. DENT.
E. J. DENT,
Major, Corps of Engineers."

The regulations attached, read as follows:

"Regulation to Govern Navigation and the Floating of Logs and Rafts of Logs on the Intracoastal Waterway from Bayou Teche, La., to West Cote, Blanche Bay, La.

In pursuance of the authority conferred by Act of Congress, approved May 9, 1900, entitled 'An Act authorizing the Secretary of War to make regulations governing the running of loose logs, steamboats and rafts on certain rivers and streams,' the following regulations are prescribed to govern navigation and the floating of logs and rafts of logs on the Intracoastal Waterway from Bayou Teche, La., to West Cote Blanche Bay, La., through the so-called Hanson Canal, Bayou Portage, Mud Lake and the Jaws of Little Bay.

89 Regulations.

1. No rafts, cribs, sinker-floats, or logs connected in any manner, shall be of greater width or diameter than 25 feet. Circular chain-booms shall not exceed 20 feet in diameter. No rafts shall exceed 1,000 feet in length, whether in tow, floating or moored.

2. Log tows will have the right of way through the Hanson Canal on Mondays, Wednesdays, Thursdays and Fridays, but on such days they must allow the passage of launches not requiring more than 10 feet in width of the section of the waterway. On all other days of the week, tows must allow right of way to boats of any size if required in the interests of navigation.

3. All timber shall be rafted or held together in such manner as will prevent the sinking of any log, and the raft or crib shall be so fastened or tied that it cannot become separated or bag out, so as materially to change its shape.

4. Rafts and circular chain-booms in transit shall be accompanied by sufficient men furnished with equipment and facilities sufficient to manage the movement of the rafts or booms properly, and to keep them from obstructing unreasonably the movement of other rafts or of vessels navigating the waterway.

5. When rafts are left for any reason with no one in attendance, they shall be securely tied to the bank at each end, and at as many intermediate points as may be necessary to keep the timbers from bagging into the stream, and shall be moored so as to con-
90 form to the shape of the bank. Rafts shall not be moored at critical points or prominent projections of the banks Lights shall be displayed in accordance with the provisions of the Federal Pilot Rules.

6. The mooring of all timber to the banks shall be subject to supervision and regulation by the district engineer in charge of the improvement of the waterway or his duly authorized representative.

7. The owner or owners of any raft which is tied to the bank shall keep the same free from water hyacinths, and in removing the plants they shall be placed on shore or upon the raft itself and shall not be thrown into the water.

8. Certain tributaries and bayous, bays, lakes, sloughs and cutoffs along the said Intracostal Waterway may be used as storage ponds or yards for rafts or timbers, provided no private or other rights are invaded, and provided further that an open space not less than half of the width of the stream, be left as a fairway in all of the navigable tributaries, which shall also remain open and have an ample clear passage. Said storage spaces shall preferably be protected by booms, and should there be any difficulty in maintaining an open channel, the parties storing timber or rafts in said places shall provide at their own expense, suitable and efficient piles or booms, so placed that the booms cannot float across and obstruct the channel. Prior authority for the placing of said booms must be obtained and application therefor should be made through said district engineer.

9. These regulations shall take effect and be in force on and after —— —, 1920.

91 At this point a recess was taken until 2:00 o'clock p. m.

After Recess.

E. J. DENT examination resumed:

By Mr. Alpha:

Q. Now, Major Dent, I will read you certain words from the fourth paragraph of your letter, and will ask you to give their meaning to the jury. "4. If the Albert Hanson Lumber Company will not oppose the expropriation proceedings in connection with the Hanson Canal property, this office would be disposed to recommend to the Chief of Engineers that regulations substantially as proposed in the accompanying draft be agreed upon in adance, to take effect on the date that the United States obtains possession of the property." What was your meaning in that paragraph?

A. It seems to me the meaning is clear; it means just what it says.

Q. Then what does it say?

The Court: Well, that is a question for the jury. The only thing now that is relevant is you want to know whether the Major will put those same rules and regulations into effect after the expropriation.

Q. In view of the fact that you were to propose the regulations attached to your letter, if the Hanson Company didn't oppose the expropriation proceedings, didn't you mean that you would propose harsher restrictions if they did oppose those proceedings?

A. No.

92 Q. Then didn't you at least mean that this form of regulations would be the lightest form against the company that you would propose under any circumstances?

A. I did not. If my office becomes the custodian of that canal, whether by condemnation proceedings or by any other process, it will be incumbent upon us to formulate regulations for its use. In an effort to persuade the Albert Hanson Lumber Company to permit this condemnation to go through without contest, as had been formerly agreed upon, I prepared those regulations, in an effort to show the Albert Hanson Lumber Company that it was possible to utilize the canal along with the public, and that the regulations which we must eventually promulgate would be reasonable and would permit the Albert Hanson Lumber Company to conduct its business through that canal. There is no intention on the part of this office to make harsher regulations in the event that we come into possession of this canal in spite of the opposition of the Albert Hanson Lumber Company.

Q. Then, until regulations are adopted by the War Department,

how would the canal be governed under the authority of your office, the general law then existing?

A. Every officer of my department, engaged in the river and harbor work, all of us, assistant engineers, inspectors and so forth, have some very considerable powers, analogous to police powers, for controlling and handling navigation on public waterways, but I cannot quote those verbatim, or even give anything more than a very general statement of what they are. Under those powers we would undoubtedly, to a certain extent, act as a traffic policeman on that canal, pending the formal promulgation of orders by the Secretary of War.

83 Q. Your office has not the authority to coerce the Secretary of War to adopt a set of resolutions, has it?

A. No.

Q. Your office must await his pleasure in that regard, must it not?

A. Yes.

Redirect examination.

By Mr. Dresner:

Q. Your negotiations with the Hanson Lumber Company with regard to this canal, have they at any time protested against the necessity of the use of this canal for the proposed inland waterway?

A. I don't understand that.

Objection.

Mr. M'Caleb: I object to that. What is the purpose of that question?

Mr. Dresner: Well, I think the question speaks for itself.

The Court: Nobody heard your question, Mr. Dresner; I know I didn't hear it.

Mr. Dresner: All right; I will repeat it.

Q. In your negotiations with the Albert Hanson Lumber Company concerning this canal, did they ever protest against the necessity for the use of this canal, in connection with this proposed public waterway, as to its necessity for that use?

84 Objection.

Mr. M'Caleb: I object.

The Court: I overrule your objection.

Mr. M'Caleb: I reserve a bill. I object on the ground that the question of necessity is one for Congress and not for the Department. Your Honor overrules my objection and I reserve a bill.

A. About a year ago, as I recall it, I had a conference with the representatives of the Albert Hanson Lumber Company at Garden City, and at that time Mrs. Lawless stated that she regretted the

necessity for the government taking over this canal and hoped that some other action could be made.

Q. You mean by that, she indicated in that conversation that it was a necessity, that she realized it was a necessity, but regretted the occasion for the necessity?

A. That is essentially what it was, and also that she hoped that some other location might be obtained.

Q. Did you undertake to explain or to satisfy Mrs. Lawless as to the necessity for the expropriation of this particular canal?

A. Not at that time.

Q. Did you, on former occasions, explain to her or some other representative of the company?

A. I might say that at the time of that conversation, I was new to this office and new to this whole situation. There had been offered to me two alternative routes in addition to the possible Hanson Canal, and as a result of this conversation, I went on to investigate those other two routes to see whether it would be pos-
95 sible, in view of the interests of the United States and the general public, to abandon all attempts to obtain the Hanson Canal and to adopt another route in its stead.

Q. Will you state the result of your conclusion after making that investigation?

A. I came to the conclusion that to adopt any other route would entail a very great delay in obtaining rights of way, that to adopt the New Iberia route would entail an additional haul of some twenty-seven miles for a considerable traffic, and that, all things considered, the Hanson Canal route was by far the best for the public interest.

Q. Mr. Alpha asked you as to whether you had any authority or power to coerce——

The Court: I don't understand the question of whether or not it is necessary for the government, or desirable, is at issue; the only question for the injury is the question of damages.

Mr. Dresner: Well, if the defendants will agree to that, we will restrict our examination to that point and save the time of the Court.

The Court: That is my understanding of it.

Mr. M'Caleb: The petition sets forth the necessity of this canal, if your Honor please, and one of my exceptions to the petition covers that ground. Of course the matter has not been argued to
96 your Honor, but the position I assumed was this: The question of necessity is one—in other words, the mere fact that Congress states the necessity, the mere fact that Congress may order the expropriation of property, that will not in itself include the necessity; the question whether or not it is for public use, whether it is for public use or for private use, that is a judicial question; the question of necessity is a matter for the legislative department.

The Court: The fact that the government is seeking an expropriation is pretty conclusive that it is for public use; you can't have any expropriation for private use. I don't think there is anything before this jury but the question of damages.

Q. Now with regard to the power that your office or you may ave in regard to coercing the War Department as to the regulations at it might make that would interfere with or facilitate the move- ent of timber——

The Court: I will charge the jury on that point too.
Mr. Dresner: The Government rests.

Testimony for Defendant.

WALTER Y. KEMPNER, sworn and examined as a witness on behalf f the defendant, testified as follows:

Mr. Alpha: I desire to arrange an easel, if your Honor please, so hat the jury can see some things I want to show them.

(An easel is set up facing the jury, on which a large plan or rawing is exhibited.)

Direct examination.

By Mr. Alpha:

Q. What is your name?
A. Walter Y. Kempner.
Q. Mr. Kempner, what is your profession?
A. Civil engineer and surveyor.
Q. Are you acquainted with the course of the Hanson Canal?
A. I am.
Q. Look on that easel and state whether or not you know that map?
A. It was made under my direction, in my office.
Q. State whether or not it is a correct map of the canal?
A. It is.
Q. Indicate to the jury, if you please, what the yellow mark or strip through the map indicates?
A. That yellow mark, beginning at Bayou Teche and running through to Bayou Portage indicates the 300 foot right of way, inside of which is located the Hanson Canal, the Hanson Canal being tinted blue on the map.
Q. Now indicate to the jury what the large stream is, nearest to you?
A. This is Bayou Portage; the small point between Bayou Portage and Bayou Bartholomew is what is known as the cut off.
Q. Now indicate to the jury Bayou Bartholomew?
A. Bayou Bartholomew is shown in the lower left hand corner of the map, only a small portion of the bayou being shown. The Bayou Teche is shown in the upper right hand corner of the map, only a small portion of it being shown.
Q. Indicate to the jury the Hanson Canal Company's locks, the two railroad bridges and the public road bridge.
A. One lock is located near the Bayou Teche, next comes the public road and the Iberia, St. Mary & Eastern, or Frisco Railroad,

and the double track of the Morgan's Louisiana & Texas Railroad & Steamship Company, below which is the second lock.

Q. What is the length of the canal indicated by the yellow strip?

A. About *four ten* miles.

Q. What do the blue marks leading out from the yellow strip indicate?

A. They indicate lateral canals which have been cut from the Hanson Canal and pockets which have been cut for the purpose of pulling timber.

Q. What does this blue mark running parallel to Bayou Portage from a common point on the canal indicate?

A. It indicates a canal which is now being dredged by the Alber Hanson Lumber Company from the end of the present Hanson Canal through to reach to Bayou Bartholomew, at the cut off, a the old cut off. It lies to the south of Bayou Portage.

99 Q. State whether or not there is any rainfall or drainage water that goes into the canal from these lateral canals?

A. All of the water that falls along the Teche a considerable distance to the east and west of the canal, drains out through the lateral canal, as shown on the map, and a large part from the upper end of Bayou Sale drain into the same; all waters are drained out through what is called the Bayou Sale Lateral, the canal coming from the Hanson Canal and going in a southesterly direction and finally leads out through the Hanson Canal.

Q. What area is drained into the Hanson Canal under these laterals?

A. Something like eight or nine thousand acres.

Q. What is the present width of the Hanson Canal both at point of average and at its narrowest places?

A. The general width of the Hanson Canal is 40 feet within the pilings; it has some several places that are less than 40 feet, some are 37 feet; the locks are 30 feet wide, and at the railroad bridge it is about 26 feet.

Q. What is the width of an ordinary boom of timber now, going through the canal, or has gone through the canal, as long as you knew it?

A. The attempt is to have these booms 24 feet wide; sometimes they are wider.

Q. Do you know the depth of the canal?

A. The Canal will average nearly eight feet below mean tide level, the upper end of the canal behind the Bayou Sale and the locks is not quit as deep as it is below the Bayou Sale laterals.

Q. State whether or not you were requested to inquire into the question whether or not the public can use the Hanson

100 Canal *with* the defendant party is using it, and if so the extent of interference that you found, if any?

A. I spent a considerable time on the canal and securing every available means in order to arrive at, as near as I could, the damage that would be suffered by the defendant in the event the canal was open to public use.

Q. In that connection, you may narrate the extent of the damage that you discovered, in your own way.

A. I first figured the cost of the canal when constructed in 1907 and 7. Some of these figures I was able to get from the company's books, others I was obliged to estimate. The cost of excavation, yardage, was the largest item I had to estimate, the yardage being 290,000, I estimated it at 11 cents, which was $31,900.00.

Q. That was for what year?

A. That was for 1906 and 7, the year in which the cost of the canal, figured as the total cost of the canal exclusive of the right of way, was figured as $65,000. There was not included in those figures some 2,700 feet of pockets and branch canals that will be on the 300 feet right of way, if it is taken over by the government for the use of the public. Adding the excavation for these pockets and lateral canals, the number of yards now becomes 322,000. That work today is worth 20 cents per cubic yard. This brings the excavation cost alone to $64,400.00. In 1906 and 7, when the locks were constructed, the records show that it cost $15,452.12. As prices of cement, lumber, iron, piling and labor have all advanced from 85 to 290 per cent., the cost of those locks would now be $40,793.60. The railroad bridge which cost $9,711.84, Southern Pacific Railroad bridge, would today cost $25,638.00. The highway bridge,
101 which cost $1,471.43, would at present cost $3,884.57. The increased cost on the highway bridge is based on the increased price of materials in that bridge. Since 1907, the Company has been obliged to remodel that bridge and put a steel or an iron girder under it. I don't know just what this cost, but it was between five and seven hundred dollars, I think. The cost of remodeling the bridge was not included in either set of these figures, and no provision is made for a bridge of a more expensive type than the one originally constructed. The piling of the banks, which cost about $3,000.00 in 1906 and 7, would cost $10,350.00 now. The cost of engineering and supervision today would be about $6,933.52, as against $2,600.00 in 1906 and 7. Included in that 1906 and 7 cost was that for a temporary bridge which had to be installed for the public to use during the time that the canal was cutting through the highway. This cost is not figured in the estimate of today's cost. It would, therefore, as near as I can arrive at the figures, cost to reproduce the Hanson Canal today, $152,000.00. The advances in prices that I used in these figures were taken from actual purchases made, and are as follows, in percentages: Cement 85%; iron 113%; lumber 232%; piling 290%; labor about 200%. I know of no location in which a duplicate canal could be cut by the Hanson Lumber Company, as they have no right of way other than the 300 feet right of way now under discussion.

Q. Now, while we are upon that point, state who owns the land on each side of the yellow strip on your map from Bayou Teche to Bayou Portage?

A. From Bayou Teche——

Mr. Dresner: I believe the records would be the best evi-
dence.

102 The Court: Is there any dispute about it?

Mr. Dresner: I don't know. As a matter of fact we don't

know the materiality of it, and in the second place, we didn't kno this matter was a question at issue. We don't know who th owners are.

The Court: Were you expropriating that?

Mr. Dresner: Not expropriating anything beyond the yello border, this 300 foot right of way.

The Court: Only the canal——

Mr. Dresner: Plus the 300 foot right of way, and now the questio is something in regard to the 300 foot strip.

The Court: What do you want to show by that, Mr. Alpha?

Mr. Alpha: We want to show, if your Honor please, the compan cannot cut any other canal; it is bound to suffer the situation continue as it is, and it is bound therefore, for the indemnificatio of its damages, it is bound to prove them only in the expropriatio suit, to show it can't get relief by the cutting of another canal.

The Court: I think that is a foregone conclusion, that they wou cut another canal.

103 Mr. Alpha: Does the Court permit the question?

The Court: Yes; he can answer the question.

A. The land on the southwest corner of the Canal, for a short di tance, belong- to Mrs. Lawless; the strip that she owns extends on back to the 40 arpent line, about less than a mile and a half fro Bayou Teche, and on the east side of the canal and back of the 4 arpent line, for a very considerable distance belongs either to J. W Foster or Murphy J. Foster, from whom I don't think it would b possible for the Hanson Lumber Company to acquire right of way.

By the Court:

Q. Well, never mind about that. It doesn't belong to the Hans Lumber Company?

A. No, sir.

By Mr. Alpha:

Q. Did you give both sides of the canal in your answer?

A. I did.

Q. Now state whether or not you have made any investigatio into the question of interference, if the government competes wi the Hanson Company in the use of this canal, after it is taken ove and the extent of damage the company will suffer in that event, an if so, then narrate the damages.

Objection.

Mr. Dresner: May it please the Court, I object to the question, o the ground it is an assumption that the governmnt intend

104 to compete with anybody in the operation of this cana whereas the purpose of the government is to make it a can for the use of the public.

The Court: That is exactly what they are going to make.

Mr. Alpha: I said, the public competing, if your Honor please; not the government.

The Court: You said "the government," but I know what you meant. Does the Hanson Company charge tolls on that canal now?

Mr. Alpha: No, sir.

The Court: Go ahead.

A. Owing to the fact that a considerable amount of drainage water goes out through what is known as the Bayou Sale Lateral, that is, the lateral that comes into the lower right hand corner of the map, as well as the Becknel and Arlington, which are on the opposite side of the Bayou Sale, lateral, rainfalls or sudden tidal changes cause strong currents in the lower part of that canal. These currents are never so strong in the upper portion of the canal, because it is locked —the upper end being dead, sudden variations of the speed of the current do not occur. At present the company stores timber in the canal, particularly above the Bayou Sale Lateral, in order
105 that its boats may tow from the canal to the mill when currents are adverse in the lower part of the canal; it is not practicable for their small boats to tow against a current of more than about half a mile an hour. Under the rulings, they will be deprived from the use of the upper portion of this canal. I have estimated that that loss will amount to about $4,400.00 per annum. Under favorable circumstances, their larger towboat, the Ivanhoe, which tows from the pull boat and stores the timber either in the canal or Bayou Portage, by taking advantage of the tide, brings tows more than a mile long, and very frequently helps the smaller boats by taking tows from Bayou Portage into the upper reaches of the canal, where they can be handled by the boat which does that work. That boat now is named the Roxine. As no tow of over 100 feet in length would be permitted, the Ivanhoe would not be able to render little if any assistance to the other boat in leading timber up where the small boat could handle it. This would naturally be another loss of about $4,400.00, or 12% of their towing time. Under present circumstances, the records show that the Roxine loses about 25% of her time due to disabled machinery or accidents to the tow of timber, picking up sinkers, getting timber loose after it is lodged, ejecting it. If anyone else were towing in that canal though, with less experience than the Hanson Lumber Company has had, they would certainly be liable to that much loss of time. If their boats were towing ahead of the boats of the Albert Hanson Lumber Company, a loss of time to the Albert Hanson Lumber Company, not being able to pass their tows would be caused, a loss of time by the loss of time of the other party. This lost time, during the course of the year, would amount to considerable. I figure it is about 6%, or $2,200 per annum.
106 Now then, when timber has a right of way through the canal, other boats less than 16 feet wide would be permitted to use the canal. As a timber boom is 24 feet wide, and the canal is 40 feet wide—16 feet is the maximum width that can be passed by another boat, it can be seen, for this other boat to pass, it would be necessary

for the timber to lay in very close to the bank, and dragging the timber against the bank would detain the tow. There would be some lost time during the course of the year from this cause, which I have estimated at about 1%, or $370.00. During three days of the week, all craft will have the right of way over the timber. It is impossible to so boom the timber that it can be towed backwards. Timber which may break down, or, through any accident, be caught in the canal during days on which other people were liable to use the canal, would be violently let go, consequently it would not be possible to attempt to tow during the three days that other boats have the right of way. The loss of those three towing days will amount to 33⅓% of the total towing time, or $12,390.00 per annum. During the days on which no timber is towed, the company will have to send out to its pull boats and its dredge boats, a barge load of food and supplies. The towing of those barges will be interfered with by other boats using the locks, or by other boats of such draft or of such width that the two cannot pass, the canal being but 40 feet wide, two 22 foot barges can not pass. The lost time from that cause I figure at about ½ of 1%, amounting to $140.00, or a total loss of 65% of the towing time, which amounts to $24,000 per annum. The present cost to the company of towing, as per figures taken from their books, is $20,002.50 per annum. Of this amount, about $12,000 is spent between
107 the mouth of the Big Swamp Bayou in Bayou Portage and the mill. The interruptions before mentioned would necessitate the use of three boats of a stronger and better type than the Roxine. Now you see, the cost instead of being $12,000, would be three times that, or $36,000 per annum, the increase being $24,000 per annum, from which I have figured the percentages as just outlined. This loss would extend over a period of ten years, the company feeling that it still has ten years of logging through this canal, with a probable additional of two or three years on second growth timber. The cost for ten years would be $240,000, exclusive of the depreciation or wear and tear of the boats being used in towing. No depreciation was taken into account on these figures. While it would be impossible for the company to secure a right of way for a railroad from their saw mill to the head of the branch canal they are now cutting, I have nevertheless made an estimate on the cost of the laying and equipping of a railroad. We take five miles of standard guage railroad track, with its necessary water stations and coaling stations, it would amount to $50,000; one derrick for loading logs from canal to cars, $5,000.00; one log pit for unloading logs at the mill—I know of no visible site—$3,000.00; 2 locomotives $20,000.00; 80 logging cars about $40,000; with an additional annual cost for operation, labor and fuel, of $7,500.00, which in ten years would amount to $75,000.00; total cost of equipping and operating a railroad for ten years being $193,000.00.

Q. In what direction does that carry the railroad, if it is possible to lay it?

A. It would take it in the nearest direction from the east end of the cut-off canal to the Hanson Lumber Company plant.

108 Q. State whether or not that would be the closest run that possibly could be made, even if the right of way could be secured?

A. I had figured it over the closest way, and that is the shortest distance. Two and a half miles of that, about, would be over land belonging to Mr. Foster. As I mentioned a short while ago, timber cannot be so boomed as to permit of its being towed either forward or backward. Not only do the book logs project outside of each other in fan shape, so that when they strike an obstruction, so that they will close in the lower part instead of hanging on it, but the well butts are turned from the towing, the top of the tree being towed top foremost, so when the tree strikes the bottom, it will ride over the obstruction instead of catching on it and stopping the tow or breaking up the raft. If any chances are to be taken by the company of being in the canal on days when timber has not the right of way, it would be necessary to barge its timber without taking — consideration the additional expense of getting this timber in short lengths, it being impracticable to load trees as long as 80 feet into barges, and unloading them at the mill on to the carriage. The cost of 30 barges 100 feet long by 22 feet wide would be $120,000; two derrick boats for loading and unloading, $10,000.00; 3 pump boats at $1,000.00, $3,000.00. This equipment would cost $133,000. It appears to be the cheapest method, through there are a great many obstacles because of the fact that the timber would have to be cut in short lengths and because of the difficulty in handling it twice by hoists. I believe those are about the only methods that I figured of trying to handle timber.

Q. State whether or not you observed the towing operations themselves and kept time against them and the distances that the tows were pulled.

109 A. I did, on several occasions.

Q. Give the result of your observations?

A. On one day, the Ivanhoe, which is the stronger boat and which would not pass under the railroad because it is too high, towed two booms out of Bayou Portage and towed them above the Bayou Sale branch. I timed it by taking each separate boom as it came out of the bayou, and then I timed it from the lower end of the canal to the upper end of the curve at the Bayou Sale lateral. Coming out of the canal its speed gradually increased from a half to about two-thirds of a mile an hour against the current, a little less than half a mile an hour, and getting into the straight canal, it continued to tow with full head at the rate of two-thirds of a mile an hour. On the same day—these two booms were about 3,000 feet long—on the same day the Roxine attempted to pull four booms. The current was too strong to get them out of Bayou Portage or to move them about, so he hooked on to two booms and an empty barge and towed them at the rate of a little less than half a mile an hour. Late in the evening, when the tide went down and the current increased in speed, the Roxine was obliged to let go, because it couldn't make any headway. On another occasion, with a favorable tide,

the Roxine pulled six booms at the rate of a little more than two-thirds of a mile an hour.

Q. State whether or not the tides you observed were ordinary or extraordinary tides?

A. The tides that I observed were ordinary, with slight variations. Tides frequently occur that make the current so strong that the boats can't tow at all, simply have to tie up and wait till the tide changes or the current slacks. In the winter times they are sometimes unable to tow for three days at a time.

Q. Owing to the outrunning tide or low water?

110 A. Owing to the outrunning tide.

Q. How much of the Hanson Canal is affected by tidal influence?

A. To a greater or less extent, the entire canal, but the major portion of the effect is only from the Bayou Sale Lateral down.

Q. State whether or not the waters in Bayou Teche are higher than the waters in the canal, and if so, to what extent?

A. The waters in the Teche, during the season of the year when there are no head waters in the Teche, are very near the same as those in the canal. Sometimes they are the same. After rainfall, the Teche frequently rises more than the canal. During high water, the Teche rises considerably, several feet above. In 1912, the Teche was something like eight feet higher than the water in the canal.

Q. During that time, then, state whether or not the locks were carrying an eight feet water pressure?

A. They were.

Q. State whether or not there has been any high water in Bayou Teche this year, and if so, to what extent and for about what length of time?

A. Well, the high water in the Teche extended over several months this year; I don't know the maximum amount, something in the neighborhood of three feet.

Q. You mean by that that the water in Bayou Teche is higher by three feet than it is immediately behind the lock, the first lock, in the Hanson Canal?

A. Yes, sir.

Q. You stated a while ago that it would require two more boats of the Roxine type to carry the tows of the defendant company through the canal, if it were thrown open to public traffic. State

111 where those boats would be used?

A. I said that they would require two more boats of a greater power than the Roxine, because they would be such boats as could tow booms against ordinary tides of from half to three-quarters of a mile an hour at least, the time being limited in which the towing has to be done, the power would have to be supplied in order to tow against tides which we now don't attempt to tow against.

Q. Why doesn't the company attempt to tow against the tides?

A. It would require too much power in the first place it is not economical. The company very frequently practically brings in tows on the side, merely using power enough to keep the tow straight.

Q. You referred to, and pointed out to the jury, the canal now

being cut by the company. State what is the necessity of cutting that canal.

A. That canal is being cut in order to allow the use of Bayou Portage to the public; the company has been laying up timber in that canal.

Q. In that bayou, you mean?

A. In Bayou Portage. If one-half of the navigable width of the waterway has to be left open, as under the proposed regulation, the company will have to abandon the use of Bayou Portage as a storage basin, and for that reason and in order to avoid the necessity of having to take tows from the lower end of Bayou Portage they are cutting their own private canal for storage purposes, and to get their timber closer to the mill outside of either Bayou Portage or the present Hanson Canal?

Q. What will be the cost of that canal, that new canal, now being cut?

112 A. I think I figured that at about $22,000.00.

Q. Now what was the cost of the right of way or strip of land upon which it is cut?

A. I don't remember; a portion of the right of way they have purchased; the rest of it they leased for a period of ten years.

Q. In fixing the present value of the main canal indicated by the yellow mark, did you give the cost of the strip 300 feet wide?

A. No, I did not.

Q. State what that cost was?

A. The company owned a right of way for the canal 50 feet wide, with the privilege of putting the dirt on that right of way outside of the canal, and under those conditions were occupying something more than one-half the width of the right of way. They purchased the right of way in fee simple for $3,000.00 from J. W. Foster and $50.00 to M. J. Foster; they paid, in other words, $3,050.00 for about one-half of the right of way, the other half of which they acquired under a previous deed, making the cost, therefore, about $6,100.00.

Q. When you say "previous deed", state whether or not you mean a previous exchange wherein you couldn't find the value?

A. It was an exchange in which the value was not stated.

Q. If the resolution adopted by the Hanson Company in 1913 contained a proviso that the grantor, the Albert Hanson Lumber Company, Limited, and its assigns shall always have and enjoy the free access, ingress and egress to and from said Hanson Canal through the lateral canals now constructed and used by the Albert Hanson Lumber Company, Limited, in its timber operations and lumber business and for all such commercial purposes as the said lateral canals may be used for hereafter, even after the Han-

113 son Canal shall have been converted into a public waterway and the present condemnation suit does not reserve those rights to the defendant company, and makes no provision for their preservation, state what the company would lose, that is, the difference between the reservation of the rights under the resolution and the loss of the rights under the present condemnation process or value of the rights themselves?

The Court: What is the fact about the resolution; did it have anything like that in it?

Mr. Alpha: I was reading from it.

Objection.

Mr. Dresner: If your Honor please, I desire to object to this question on the ground it assumes the government will not allow the Albert Hanson Lumber Company, in common with other parties and the public generally, to have fair and free ingress and egress from that canal and free access to it.

The Court: Well, I will have to overrule that. They certainly won't have the same control over the canal when they share it with the public as they have now when it is a purely private waterway.

Mr. Alpha: Does your Honor's ruling permit the witness to answer?

114 The Court: Yes.

A. Under that agreement, the company would have the right in that canal seven days in the week as it now has, instead of Mondays, Wednesdays, Thursdays and Fridays, as is prescribed in those regulations. They could continue to raft their timber as they are now rafting it, which permits of the occasional sinking of a log which is afterwards picked up, and wouldn't have to provide that all timber shall be rafted or held together in such a manner as to prevent the sinking of any log which is an impossible requirement. It would be deprived of the right of tieing up timber in the canal which they now have, and, in fact, practically all of the damages which I have recited would be damages which would be caused by the fact that they cannot operate or could not operate in the canal as they are at present operating.

Q. State whether or not the defendant company now stores timber, and always has stored timber since the canal was constructed, from the locks at Bayou Teche onwards towards the Gulf of Mexico?

A. They have always stored it there. I dount that there have been more than two or three days since the canal operations have been regularly begun, except on Mondays, when the canal must be cleared to permit the passage of barges, but what there has been timber in that canal. I have been through that canal many, many times until a few weeks ago, the first time I was in that canal on Monday, the first day I remember ever seeing it clear of logs.

Q. When you say the canal, you mean in some portion of the canal, whether visible from the railroad trains or not?

115 A. I mean, in some portion of the Hanson Canal, that is, within the area that is contained in this map.

Q. How much of the canal, approximately, can be seen by a passenger on the railroad trains?

A. Well, the ordinary speed at which trains pass there, about three or four thousand feet, not more.

Q. Can a passenger see as far down as what you call the Bayou Sale Lateral?

A. The canal begins to curve at Bayou Sale Lateral, and under

favorable circumstances, they can see as far as the Bayou Sale Lateral, that is, a third part of the canal.

Q. Then if the canal appears to be clear of timber to a passenger on the trains, under your answer, it nevertheless is not clear of timber even though the passenger can't see it?

A. Unless it is on Monday, up to the time that the supply barges have passed out. The rule of the company is——

The Court: That is something that can be made certain, with no conjecture about it; the use of the canal, by the officers of the company; is Mr. Kempner an officer of the company?

Mr. Alpha: No, sir.

The Court: Well, you must have some records that would show that fact——

Mr. Alpha: I don't understand your Honor.

116 The Court: You must have some records of the Company, or some officer or foreman or somebody, that could tell us exactly, without guessing by what some one might say or hear.

Mr. Alpha: I am not trying to show the canal was clear of timber half the time, because they couldn't see the timber, but after you got round the curve the canal would be always full of timber except one day in the week.

A. The rule of the Company is to have the canal clear on Monday for the passage of barges; all other days of the week it is to be used for the towing of timber.

Q. What is the necessity of clearing the canal of timber in order to permit the passage of supply barges?

A. The barges are too wide to pass the booms of timber, there is no room, not room enough in the canal for the passage of the barge alongside of the timber.

Q. What is the width of the barges?

A. I am not sure, but I think about 20 or 22 feet.

Q. State whether or not there are a number of other barges in that section of the state that could use this canal if taken over by the government, even wider than the Hanson Canal barges?

A. There are, though barges more than 26 feet wide couldn't get through under the railroad. These barges could be used for towing.

Q. What is the advantage of having the timber stored in the canal?

A. In order to have a supply that can be reached when
117 there is a down current, that can be handled when there is a down current; that is the object in storing the timber above the Bayou Sale Lateral.

Q. What is the daily cut of the mill?

A. I don't know exactly.

Q. If it is 5,000 feet, state how many booms of the size of timber now being floated through the canal would have to pass through?

A. From five to seven, depending upon the size and kind of timber to be sawed, if the timber is of small diameter, it would take more than it will take where the timber is large.

Q. What is approximately the length of each boom ?

A. From 200 to 250 feet.

Q. State whether or not the Hanson Company now, and has since 1907, used the canal continuously for its mill operations?

A. It has, to the best of my knowledge and belief; some contingency such as a breakdown is the only thing that could have stopped them.

Q. State whether or not in your opinion, the Hanson Company and the public can use the canal together, except with great cost and inconvenience to the Hanson Company?

A. In my opinion, it couldn't be done, except at a very heavy expense to the Hanson Company.

Q. State whether or not any of the inconveniences that you have testified about necessarily will cost the Hanson Company money?

A. They will.

By the Court:

Q. Does that canal require any dredging?

A. Yes, sir, it is going to require some dredging, before very long.

118 Q. How often do they have to dredge it?

A. I don't know how often it has to be dredged, but there has been dredging done since it was built.

By Mr. Alpha:

Q. State whether or not it is possible for the defendant company and the public to use that canal together with any addition of your approximate loss of $24,000 a year?

A. I have made those figures conservative; I believe it will cost at least that amount for the company to so equip themselves as to log with conjunction of other users of the canal.

Q. If, on the four days that the company and other timber owners using the canal, part of them would have two tows in the canal at the same time, and the Hanson Company's boat would be the faster of the two, and would be in the rear of the other boat, would it be possible, in the event of a breakdown by the boat in front, or in the event it were overtaken by the defendant company's boat for the defendant company's boat to pass the boat in front?

A. It would not, because the 24 foot boom in the canal now occupies all but 16 feet, it is not practicable to boom timber down to 16 feet width.

Q. Why is it not practicable to boom it down to 16 feet in width?

A. Because you can't get enough timber in a boom; it would be much too long.

Q. Wouldn't the result of narrowing the boom be an augmentation of the cost of logging the mill?

A. It would.

Q. Now if the boat in front makes only half the time that the boat in the rear makes in towing, and the rear boat is the Hanson

119 Company's boat, does not it suffer a loss and delay by reason of being compelled to remain behind the other boat irrespective of accidents?

A. It does.
Q. Now——

The Court: A good deal of this damage is proven up already. Now it is getting to be purely speculative to go to the jury. I am letting it go in so as to give a general idea, but I am going to take it away from you after a while.

Cross-examination.

By Mr. Dresner:

Q. Mr. Kempner, how many timber owners are there in the vicinity of the Hanson Canal that would avail themselves of the use of that canal besides the Hanson Lumber Company?
A. How many timber owners?
Q. Yes; that could avail themselves of the use of that canal besides the Hanson Lumber Company?
A. The other timber owners—there are some parties I don't know, but I do know J. W. Foster and M. J. Foster and the Baldwin Lumber Company, and there are one or two plantations that own some hardwood timber that is tributary to that.
Q. How many owners would you say that would make; half a dozen?
A. In that immediate vicinity; in there are probably six or eight; the Kyle Lumber Company also owns some, but this canal would be tributary to another large section lying further away, where there are half a dozen owners, and, oh I guess twenty-five or thirty thousand acres of land, the timber from which could be brought through this canal to Bayou Teche.
120 Q. You think it would be used?
A. Well, I don't know how much of it would be used. There is a considerable area there that could be used, and in addition to that, the Baldwin Lumber Company could tow their timber in the opposite direction to the tow of the Hanson Lumber Company and up through the canal, and in No. 1 Drainage District I think they have some perpetual timber rights that they have logged on a little and when they get ready will log on again.
Q. How many feet of timber, can you give an approximate, how many feet of timber besides what is on the Hanson Lumber Company's lands, could be profitably used, or could be used?
A. Well, I think between seventy and seventy-five million feet that is tributary to that canal. Now I don't say how much of that timber would be brought through that canal, but there is that much that is tributary to that canal and can be brought through it.
Q. Now I am not talking about what could be brought down, what could be profitably brought down; the question was, would you think—how much of that seventy-five million feet——
A. Seventy-five million feet that can be profitably brought through that canal.
Q. Now do you mean the 75,000,000 feet is exclusive of what the Hanson Company owns?

A. No; I mean 75,000,000 feet exclusive of the Hanson Lumber Company.

Q. Exclusive of it. Now assuming that the Hanson Lumber Company has a daily capacity of 75,000 feet of lumber on an average, how many logs per day would that mean that that mill would require?

A. How many logs; 75,000 (witness figures) it would be in the neighborhood of 300 logs.

121 Q. 300 logs; how many booms would that be?

A. Well, that would depend on the size.

Q. On an average?

A. From five to seven booms; say an average of six.

Q. Five to seven booms; how long would it take—that would be equivalent to one tow, wouldn't it?

A. No; that is more than one tow, if we are limited to four booms.

Q. Well, it wouldn't make more than two tows then?

A. No.

Q. How long would it take for two tows to pass through the Hanson Canal?

A. To pass through the Hanson Canal; in the upper portion of Bayou Portage, we wouldn't be able to operate in the upper portion of the bayou, but from the part where Bayou Portage is wide enough to get the booms through to the mill, it will take, with a favorable tide, about fourteen hours, and in unfavorable tides, anything from fourteen hours up to a complete stoppage.

Q. What is it, did you say?

A. Anything from fourteen hours up to complete stoppage of the tide gets too strong.

Q. Well, it finally gets there, doesn't it?

A. Well, they have got to; it depends on the tide.

Q. But you don't say what the maximum period it would take under the most unfavorable circumstances?

A. Well, under the most unfavorable circumstances, you can't move it at all.

Q. Well, for about how long would that condition be likely to continue?

A. Well, it has continued for about three or four days at a time.

122 Q. How long would have to be the boom that would have to take care of a day's output of the mill?

A. How long would it have to be?

Q. To take care of a day's output of the mill?

A. How long it would have to be to take care of a day's output; well you couldn't—the average would have to be at least 1,500 feet, four booms is about a thousand feet; take it an average of at least six booms; some days you would have to have more.

Q. Have you ever heard of this Hanson Canal being used formerly by people other than the Hanson Lumber Company itself?

A. The canal was—the public were permitted the use of the canal when it was first opened.

Q. Do you know for how long a time?

A. No, I do not.
Q. Do you remember when it was closed to public use?
A. No; I don't remember the year in which it was closed; it was efore the death of Mr. Ed Hanson.
Q. Can you tell for how many years, if for that long, the canal as used by the public?
A. How many years; no I can not.
Q. Well, would you say it was used for over a year?
A. Well, I think it was; I won't be at all positive.
Q. So far as you know, did the mill run on uninterruptedly while he canal was used by others besides the Hanson Lumber Company?
A. The mill was being logged from right near the mill, from imber close to the mill, and the interference from the public is what aused the canal to be closed to the public. The Company found hey couldn't profitably operate with the public using the canal, mainly for their pleasure boats.
123 Q. Can you indicate on your map just where those logs came from at the time that the public was permitted to use he canal?
A. Logging began at about the point marked "C" in the canal, nd extended on back to south to southwesterly direction, and the imber would come through in the neighborhood of the letter "C," between the canal and the figure 43, about through letter "S," where the Foster is; that is the very shortest distance that the timber can be towed.
Q. What is the location of the mill; can you show it on that map?
A. The mill is about a mile and an eighth away, or a mile and a quarter to the right of where the canal comes into the Teche.
Q. Mr. Kempner, do you know of a time when the Albert Hanson Lumber Company, even after it had closed the canal to public use, had towed cane through the canal and charged towage for it?
A. I either saw some correspondence or heard something about cane having been towed through there for Mr. J. W. Foster; just where the cane was towed from and to, or the year in which it was towed, I don't know, or whether there was any towage charged; I don't know anything about that at all.

Redirect examination.

By Mr. Alpha:

Q. Mr. Kempner, did you know any of the engineers in charge of the government's work at the beginning of the negotiations with the defendant company, concerning the acquisition of this canal?
A. I knew Engineer Officer Jadwin—I don't know what his title is now, I believe it is General, but he was Captain when I
124 first knew him—he made an investigation of the Intracoastal Canal route on the bill introduced by Mr. Robert F. Broussard, and I attended him over parts of his investigation, discussed the matter very thoroughly with him, furnished him with some

figures and maps and stayed with him for two or three days. Later on when the work was assigned to this office here, Major Jadwin was at that time in Galveston, Texas, and Major McAdoo was assigned to the work, and made two or three trips over the various canals in that territory with Major McAdoo, had considerable correspondence with him and a lot of discussion in the interest of the Intracoastal Canal.

Q. During what years, approximately, were those discussions?

A. 1906, 7, 8, and 9.

Q. State whether or not those officers ever declared to you in the presence of any officer of the defendant company, of the government's intention to widen the canal, if it was taken over?

A. Both of those engineers stated to me that in order for the Hanson Lumber Company to log through that canal, or anybody else to log through that canal and they said it would be a timber logging canal—it would be necessary to either widen the canal throughout, or to have places of fifty feet additional width of the length of a thousand feet every half mile. Now I won't be positive as to who was present at any of the times that those statements were made to me; they were made to me more than once, and I think in one instance Mr. Lawless was present.

Q. State whether or not you apprised the officers of the company of this declaration in an effort to induce the Company to agree to sell the canal to the Government, and used those declarations
125 as a part of the government's promises?

A. I am quite sure I used those declarations both to Mr. Ed Hanson and to Mr. Lawless.

Q. Where is Mr. Ed Hanson?

A. He is dead.

Q. About what year did he die?

A. I don't recall the year.

Q. Who was president of the Hanson Company during these years from 1906 to 1909?

A. Mr. Ed Hanson.

Q. And Mr. Lawless was Vice-President, was he?

A. He was. I think he was vice-president, at any rate he was connected with the Company, and I had quite a deal of business with him also.

Q. State whether or not the officers of the Company, during those negotiations, were given to understand that the widening process or the cutting of the passing pockets fifty by a thousand feet, would be done contemporaneously with the acquisition of the canal?

Mr. Dresner: May it please the Court, I don't want to appear to be objecting to anything that throws any light on the situation, but it seems to me that inducements and collateral conversations would not be material.

The Court: I overrule the objection. I suppose they are trying to show that they were willing to take $65,000 under certain conditions, and it is not a fair test under other conditions. I think it is relevant.

Mr. Dresner: Don't you think the contract would be evidenced by the resolutions, by the conditions of the resolu-
; there is no such condition embodied in the resolution.
he Court: You are not suing on the contract; you are merely
g the contract as an evidence of value.
Ir. Dresner: As evidence of value.
he Court: Well, I think they can show the conditions under
ch they agreed to sell for that price.

. I don't know that the government engineers, or what the gov-
nent engineers may have said to either Mr. Hanson or Mr. Law-
I am quite sure that I stressed that feature of the fact that
e would be passing places in the canal. I have a recollection
aving made a statement to show just what that extra width
ld look like in that canal. Now I don't know whether I have
py of it or if the Hanson Lumber Company have a copy of it;
ve not seen it, or rather I have not looked for it.
. State whether or not you represented the Hanson Lumber
pany or the Government?
. Well, I was employed by the Hanson Lumber Company for
h work as they wanted done. I have never been employed by
m, solely by them that is, but there is a certain amount of their
k that I handle, but I was very much interested in the Inter-
tal Canal to get it through, and in this instance my interest
was a representative of the Intracoastal Canal, or, if you
will, a representative of the government, trying to prevail on
the Hanson Lumber Company to let the government have it
the Intracoastal Canal as cheaply as possible.
. If it is practicable to tow 75,000,000 feet of this available tim-
through the canal, and you say you would do so if you were in
place of the owners, and the canal becomes a public waterway,
e approximately how long it would take for that timber to be
ed through the canal?

The Court: Oh I think that is too speculative.

At this point a recess was taken until the following morning at
30.

July 20, 1920.

All parties interested being present, the trial of the case was this
y resumed.

N. G. HUTH, sworn and examined as a witness on behalf of the
fendant, testified as follows:

Direct examination.

By Mr. Alpha:

Q. What is your name?
A. N. G. Huth.

Q. What is your occupation, profession or vocation?
A. Dredge contractor.
Q. Do you know the Hanson Canal?
A. Yes, sir.
Q. Did you ever work on it?
128 A. I dug it.
Q. About what year?
A. It started in 1906 and finished in 1907.
Q. State whether or not you were in the dredging busines
A. I was employed by the Hanson Lumber Company.
Q. Are you still in the dredging business?
A. Yes, sir.
Q. How long have you been in the dredging business?
A. Do you mean for contracting?
Q. Either way?
A. About twenty years.
Q. How long have you been a contractor?
A. Ten years.
Q. Are you interested in a dredging Company?
A. Yes, sir.
Q. How many dredges does it own?
A. Six.
Q. Are you an officer of the company?
A. Yes, sir.
Q. What office do you hold?
A. President and general manager.
Q. State whether or not you have been over the Hanson C
lately?
A. I went through it about two weeks ago.
Q. What would your company charge to cut that canal or
right beside it to-day?
A. It would be on a yardage basis, twenty cents a yard.
Q. Do you remember how many yards it contains, approxima
A. My recollection is at the time we dug it about 290,000 y
somewhere near that.
129 Q. State whether or not there has been any rise in the
of material and labor such as is used in the cutting of c
between 1913 and to-day?
A. Yes, sir, there has been a big rise.
Q. State whether or not there has been a rise between 1906
1913?
A. Between 1907 and 1913, I don't think there was any.
Q. When did the rise in material and labor begin?
A. It started in 1914, but the general rise was about 1916.
Q. From 1916 onward?
A. Onward up to the present day.
Q. What could the Hanson Canal have been cut for under
tract per yard in 1906?
A. About 10 cents a yard.
Q. Then you calculate the rise has been 100%?
A. Yes, sir.

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Q. Does your price of 20 cents a yard include the construction of road bridges or locks or a public railroad bridge?
A. The excavation only.
Q. And your estimate includes only cutting the canal, the removal of the dirt from the cut?
A. The removal of the dirt and the clearing of the right of way.
Q. State whether or not the Hanson Canal runs through any portion of a cypress swamp?
A. Yes, sir; the Hanson Canal, about three-quarters of it, runs through a cypress swamp.
Q. State whether or not it is more costly to cut a canal through cypress swamp than through open ground?
A. Yes, sir, it is.
Q. What makes the extra cost?
A. On account of the forest, the stumps, the cost of dynamiting, and the dredging is slowed down by digging out stumps more than where you go through open ground where there is not such obstruction.
Q. You used the dynamite to blow up the stumps?
A. Yes, sir.

Cross-examination.

By Mr. Mooney:

Q. You say that the excavating of this particular canal cost how much when the work was done?
A. That it could be dug at that time for 10 cents a yard.
Q. Do you know what that would make the total cost of the excavating work on that canal, have you any figures that would indicate the total cost of the excavation of the canal at this price or figure?
A. At that time?
Q. Yes.
A. About $29,000.00.
Q. Now to the best of your knowledge and belief, and as the man who was actually in charge of the work, that would be $29,000 for the excavation of this canal?
A. Yes, sir.
Q. That is what it cost the Hanson Lumber Company to dig it?
A. I don't know whether it cost them that or not; I was not keeping account of it. At that time I was employed by the Hanson Lumber Company, drawing a monthly salary and I didn't pay any attention to the cost of it, but I judge from the experience I had that at 10 cents a yard it could be contracted out.
Q. Of course that is exclusive of the cost of the locks?
A. Yes, sir.
Q. But that covers all of the dredging?
A. That covers the dredging only.
Q. Were there any pockets cut in the sides of the canal originally?
A. Originally not; not when I was there.
Q. You stated that you had been over the canal recently?

SE IN CENTER

A. Yes, sir.
Q. Are there pockets in the canal?
A. Yes, sir.
Q. What purpose do those pockets serve?
A. Well, those pockets serve for passage purposes, but we originally put there to pull timber in there.
Q. For instance, if a barge met a tow of timber, it would go in one of those places until the tow passed, and then continue on i way?
A. Yes, sir.
Q. Just like a switch on a railroad track?
A. Yes, sir.

W. Y. KEMPNER, examination resumed:

By Mr. Alpha:

Q. Can you remember the substance of the question I last ask you?
A. I don't remember.
Q. In part of your testimony yesterday, you spoke of making allowance for the salvage value of the paraphernalia on the t year basis; state why you didn't?
A. Because, in order to keep the machinery and barges and oth things in repair, the repair bill in ten years would about equ
132 all the salvage value would be at the end of ten years. The was no charge made for repairs and upkeep, and no allowan made for salvage value, because they were considered to practically the same.
Q. You mean one offsets the other?
A. Yes, sir.
Q. What is the approximate length of the whole canal system the defendant company, inclusive of the canals not in contest?
A. In addition to the canals concerning which I have testifie the company has about thirteen and a half miles of main line can That includes long branches, but does not include pockets, all which are tributary to and through bayous and other streams co nected with the Hanson Canal.
Q. That part of the canal system you last referred to is disco nected with the Hanson Canal proper by public water?
A. Yes, sir.
Q. State whether or not Mr. J. W. Foster has a saw mill on t Bayou Teche?
A. There is a saw mill on Bayou Teche, which is spoken of Foster's saw mill, either belongs to him or he has an interest in a small mill.
Q. How many saw mills are in Bayou Teche that could use t Hanson Canal for towing timber from this timber basin you ref to?
A. Well, there are six or eight or more, all of the saw mills o the Bayou Teche, the Atchafalaya River and Bayou Boeuf, are tributary to this canal.

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Q. State whether or not it would be possible to tow the timber from
e timber basin out through the Gulf of Mexico, or by any other
water route other than the Hanson Canal?

33 A. An attempt was made to tow timber by the outside route and so much timber was lost that it was found not be profitable and it was abandoned.

Q. State whether or not that abandonment carried with it the establishment of a very costly canal?

A. Yes, sir; the canal shows on their map that I have and I an produce it if the Court wants it. It is known as the Thorguson Canal.

Q. You spoke about the damages resting upon a different basis ou gave in your testimony yesterday; state whether or not that amage would be continual up to the time that the canal would e widened or would be absolutely continuous?

A. It would be absolutely continuous, because the lands upon hich the timber is now located is unfit for cultivation and will e permitted to grow another growth of timber after the present rowth has been logged, which would make it an indefinite and con-inuous logging field.

Q. I think you misunderstood me. I meant not the continuity f the logging operations, but the damages that the Hanson Company ou say will suffer by reason of the interference, whether or not that ill continue or could be done away with by a widening of the anal by the government?

A. It could be practically done away with, or nearly so, it could e done away with by widening the canal to a sufficient width, but ntil the canal is widened, it would continue, as long as the Hanson umber Company attempted to log through this canal.

Q. During what length of time must the Hanson Company con-inue logging, if it has to pull its timber through this canal?

A. We estimate it would take about ten years to finish the section that they are now in. At the end of that time, it would be

34 about five years longer relogging lands which they have already logged in the immediate vicinity of the canal.

Q. On the second growth of timber?

A. The second growth of timber, and some timber they didn't et away with the first logging.

Q. Is it possible for the timber that you estimate to be $75,000,000 o go to market through any other course than through the Hanson anal?

A. it is possible, yes, but it is not practicable; it would be entirely oo expensive.

Q. Would not the expense be greater in all probability than the alue of the timber?

A. It probably would.

Q. Now, going back to the values given and the damages that ou estimated yesterday, will you please give the basis for each of he damages that you estimate?

A. To begin with, after investigating all conditions, I determined hat two additional boats would be necessary and that the increased

E IN CENTER

cost or damages would amount to $24,000. I then took each
the headings as I testified to yesterday, and apportioned this cost
a percentage basis to each of the different headings. The deprivatio
of the right to store logs in the canal and tying up timber in a
of the tributary streams so as not to use more than one stream, wou
make it necessary for them to tow their timber in a much long
distance with boats of greater power and that I figure on a basis
12%.

Q. If the defendant was not allowed to store timber in the can
what would be the additional length of pull that it would have
take care of?

A. It is a mile and a half from the locks to the Bayou Sa
lateral, and that is where the bulk of the timber is laid
135 now, that is, the bulk of the timber this is towed by t
small boat, and it is four miles and a quarter from the lo
lock to Big Swamp Bayou. That would mean increasing the d
tance for the movement of a mile and a half, which would be th
quarters of a mile——

By the Court:

Q. All of that is what you told me yesterday?

A. No, sir; I didn't give this distance yesterday. That wou
mean a minimum distance of four and a half miles as against
mean distance of three-quarters of a mile.

By Mr. Alpha:

Q. Now pass to the next item.

A. The next was on the basis of reducing the tow to 1,000 f
in length, and which would prevent the boats taking long to
when the current was up. It would necessitate stronger boats so
to tow against the current and would prevent the use of their pres
large boat, the Ivanhoe, in taking long tows up the canal. Th
was all estimated on a bsis of 12%.

Q. In that connection, state about how much time the water
dead, as against the time it is moving, in one direction or the othe

A. The records of gauges kept on the canal from the 7th to t
16th of July, both of which are set from the government ben
mark, one at the lower lock and the other at the wharf on Bay
Bartholomew, the gauges were read at 6:00 a. m. and 6:00 p. m
independently, and by different observers, and in that time on
twice were the readings the same, at 6:00 a. m. of July 7th, a
at 6:00 a. m. of July 10. On three readings, the tide was high
at the lower end, in one instance as much as 12 in. On t
136 other readings, the readings were higher at the lower en
varying from 1 in. to 5½ inches. Now there was conside
able rainfall during that period, and it is probable that the wat
was higher at the locks, largely due to rainfall, but the current w
not as strong, because there was not very much difference in t
rising of the tide, due to the south wind offsetting the swell of t

water due to the rain, but for two or three days, though, the current was quite strong.

Q. You mean by that that unless the gaugues read the same, the water is in motion?

A. Yes, sir; very frequently the water will be in motion when the two gauges are the same.

The Court: We know that when the tide is running out, the boats can't run as well. Mr. Kempner told us they could only make about half a mile against the current with the boats they have, and when the tide changes they stop. Can't we cut that out and make it short?

Mr. Alpha: We are trying to make it short.

The Court: I know, but we went all over that yesterday; all this information is before the jury. Well, go ahead, Mr. Kempner.

A. The next item pertains to the loss of time due to other logging through the canal.

The Court: We have been all over that.

137 Mr. Alpha: This is our purpose: Yesterday he merely referred to each of these damages and gave no reason in the world what the damages would cost. Now we are getting him to give the reason what the damages. He merely made a detailed statement yesterday that from this cause such and such damages will result. That is not evidence.

The Court: It was all before the jury; anything before the jury is evidence.

Mr. Alpha: But we ought to be allowed to give the basis upon which that conclusion rests.

The Court: No, I don't think so; I think we have the gist of the evidence in and that is sufficient. Nobody is questioning the details. If his testimony is going to be disputed by the government witnesses, you can put him on again. I don't think anybody is going to dispute it.

No cross examination.

138 CLARENCE GARDNER, sworn and examined as a witness on behalf of the Defendant, testified as follows:

Direct examination.

By Mr. Alpha:

Q. What is your name?
A. Clarence Gardner.
Q. By whom are you employed?
A. By the Albert Hanson Lumber Company.
Q. In what capacity?
A. As timberman and superintendent of log towing.

Q. State whether or not that gives you a knowledge of how t
Hanson Canal is used?
A. It does.
Q. What are your duties in connection with the use of the can
A. To keep the crews on the boat and give orders about wh
boats tow in different places.
Q. How often do you see the canal, once a day or once a wee
A. I see it every week and almost on an average of four or f
days a week.
Q. State whether or not the timber is kept in the canal some
the time or all of the time?
A. We have timber in the canal most of the time.
Q. Is there a day in the week on which the timber is mov
from the canal?
A. We try to keep the canal clear of timber on one or two da
not in all cases.
Q. For what purpose?
A. To send the barges of food to the supply boats.
Q. And you say that all of the time the canal contains timb
A. Yes, sir.
139 Q. Is it an advantage to have the timber stored in t
canal?
A. Yes, sir.
Q. Have you ever seen the regulations that were received fr
Major Dent's office?
A. Yes, sir.
Q. State whether or not the adoption of those regulations for t
governing of the Hanson Canal would affect the Company's use
it, if the public used it according to those regulations?
A. Very much.
Q. Could you tow through the canal as well as on the four tim
days as you now can?
A. No, sir.
Q. What would be some of the interruptions that you wo
necessarily encounter?
A. You mean on the four timber days? We would encoun
small boats, boats less than 12 feet, and that would delay us qu
a time, we would have to let those by, and we can't tow but 1,(
feet of timber. I mean long, at a time, and that timber would h
to be taken from a point much further from the Teche than we n
take it.
Q. About how far, in miles?
A. Almost a mile and a half further.
Q. State whether or not the towing of other timber in the can
going in the same direction, would be a material obstruction, if y
timber were going faster than that?
A. It would.
Q. Would it also be an obstruction if the timber in front n
with a mishap?
A. Yes, sir.

Q. State how much of the time is lost from mishaps, either to the boats or to the timber while being towed?

140 A. An average of 20 per cent.

Q. What does that result from, what kind of mishaps?

A. In the canal, we have general trouble, we have pump trouble from the trash in the canal getting into the circulating pump, that gets into the pump, and you have to stop and clear it out.

Q. You may designate only as to the boat and then as to the timber. It was the timber in particular that I asked about.

A. You mean what?

Q. What timber trouble did you have?

A. We have sinkers that fall out of the timber, and we have trouble with them, if they are a little too wide, sometimes in a log, and we find a head tide in there sometimes, and so we can't move.

Q. If a sinker falls out of the boom, what have you got to do?

A. We have got to stop and raise it and raft it up.

Q. Would it be possible for one end to fall and lock the boom?

A. Yes, sir.

Q. Then would that necessitate the reconstruction of the timber?

A. Practically.

Q. That, with the engine or boat trouble and the adverse tides are the troubles you refer to?

A. With the adverse tides it would take more than 20 per cent of our time.

Q. What percentage.

A. Under the regulations?

Q. Yes.

A. More than 60 per cent.

Q. That would be from tides running against the boom and boat?

A. Yes, sir.

141 Q. Now what percentage of your time would be lost in other persons using the canal on the three days of the week, could the Company afford to attempt to use the canal at all on those days?

A. I don't believe it could.

Q. Why not?

A. Because if we got started in there and some one else would be logging through and meet us, we couldn't get out of their way.

Q. Could you back out?

A. No, sir.

Q. Why not?

A. We can't tow the timber backwards.

Q. For what reason?

A. On account of the construction of the boom. It is made in such a way as to go forward; it would have to be, well, almost reboomed to go the other way.

Q. What length of time would you take to reboom it?

A. As much time as it takes to boom it.

Q. And that is how much?

A. A day's work, to boom and tow at the logging camp it takes four men a day.

Q. And it takes four men to make a boom?

A. Not a boom; a tow of four booms.

Q. How many barges does the company send through on Monday?

A. Sometimes one, but most of the time two and sometimes three.

Q. How long is the greatest length of time you have known a barge going through the canal, or does it always go through the same day that it starts?

A. No, sir; it takes two days, sometimes, a day and a half or two days.

Q. What is the cause of that?

142 A. It is caused by having timber in the canal, and we can't pass the barge by the timber. We have to put it in one of the laterals or pockets and pull that tow of timber by it, and the adverse tides hold the timber and makes it slow pulling by.

Q. How long have you been in the timber towing business?

A. Fifteen years or more.

Q. State whether or not the defendant company logs its mill economically or whether it wastes money?

A. The operations are very economical.

Q. Do you — of any way by which it can be logged faster than it is now, do you know of any better way of logging it than it now logs it?

A. No, sir.

Q. State whether or not it logs its mill just like all other mills under the same circumstances, using canals?

A. They do.

Q. State whether or not your fifteen years' experience have carried you through some considerable portion of the swamp district?

A. It has.

Q. Did you ever steer a boat pulling timber?

A. Yes, sir.

Q. Did you ever notice the Hanson Company's boats being steered at the time the tide changes?

A. Prior to my employment?

Q. Now, since you have been employed by the Company?

A. Yes, sir.

Q. What effect has the turn of the tide upon the towing operations?

A. It brings them to a standstill sometimes.

143 Q. What part of the water brings them to a standstill?

A. The lower lateral in the main canal and in portage.

Q. Then you mean by that that they can tow against the tide in Bayou Bartholomew?

A. Not very well; we don't practice it.

Q. How much of the time does the tide run against you?

A. You mean in this part of our tow, or in the entire towing?

Q. In the canal part.

A. It goes against us more than sixty per cent of the time against our direction.

Q. Is that from adverse or cross currents also, besides the natural isting of the tide?
A. It is the drainage water.
Q. Now then, outside of the drainage, how much does the tide ne resist, how much of the tide?
A. Well, it works back and forth. Without considering the ainage, we have a regular tide.
Q. We will assume that the water is moving either one way or the her at all times than the time at which it is at a standstill; how uch in twenty-four hours is it at a standstill?
A. Very little.
Q. One or six hours?
A. Maybe an hour; two hours at the most.
Q. Now on the day that it stands two hours, half of the remainder the time it is running one way and the other half the other way?
A. Yes, sir.
Q. And the reason that you meet adverse water 60% is because e rainfall causes it to flow out towards the Gulf?
A. Yes, sir.

44 Cross-examination.

By Mr. Mooney:

Q. Were you with Mr. Kempner when he made any of the tests ith regard to the towing facilities in the canal?
A. I was with him on a couple of trips.
Q. Did you attempt any of the tests in the canal?
A. I did.
Q. You were with him at that time?
A. Yes, sir.
Q. Do you remember when those tests were made—I don't mean the exact date—I mean whether it was in July or June or what time?
A. It was either in the latter part of June or the first part of July.
Q. You are positive it was not the first part of June?
A. I don't remember that we went up in the first part of June, not with him.
Q. Is there any way by which you can fix that time, can you refer to anything else by which to refresh your memory? I am speaking now about the time that Mr. Kempner made the tests through the canal.
A. It was in the first part of July, if I remember right.
Q. What boat was doing the towing?
A. The Roxine.
Q. Will you state to the jury exactly how the towing of those logs is conducted; you say you are the superintendent. Begin with the morning say Monday morning and the crew's work, what kind do they do?

A. They get ready, and generally there is a couple of barges
fuel, they take them down and lock them through and tu
145 them over to the big boat, and she takes them, if we ha
the canal clear, she takes them down to the cross canal th
you see leads to the Frank- canal. We have the timber stored
Portage. She goes around that timber and goes through the Fran
lin canal and goes over to the Bayou Bartholomew, but generally
tow these barges in that cross canal and let the large boat take up t
tow, twenty booms, and bring them up to Bayou Sale lateral, becau
in that way we insure work for the little boat. If we have twen
or thirty booms above that lateral, most of our current is below th
lateral and the little boat continues to log in there, whereas if the l
boat didn't take that timber above that lateral, the little boat could
get to the portage and take that timber, but if the tides are worki
contrary, they run down all day and run up all night. We ha
to work the night crew on that occasion.

Q. Monday is the day you try to keep the canal open?

A. Yes, sir.

Q. How many boats do you work?

A. The Roxine and the Ivanhoe.

Q. Which is the big boat?

A. The Ivanhoe.

Q. Where does the crew of the Ivanhoe sleep?

A. On the boat.

Q. Where does the boat tie up at night?

A. Wherever her day's work finishes.

Q. Assuming that the Ivanhoe started out on Tuesday morni
for a tow, she should go where?

A. Tuesday morning, she would take the barges out and put th
in the cross-canal. We generally try to do that on Monday.
suming it is Tuesday, and you mean under our present con
tions?

146 Q. Yes.

A. She would take about twenty or twenty-five booms,
many as she could handle and take them above Bayou Sale late

Q. Where would she get them from?

A. From Bayou Portage.

Q. That is the lower end of the canal?

A. Yes, sir; right at the lower end of the canal.

Q. She would take them then at that end of the canal and bri
them up to the Bayou Sale lateral?

A. Yes, sir.

Q. How far is that in miles?

A. About two and a half miles from where she comes, or th
miles.

Q. How far below the locks?

A. About a mile.

Q. Would she bring twenty booms up there?

A. Yes, sir.

Q. That is your big boats?

A. Yes, sir.

Q. How long does it take her to bring those twenty booms up from Portage to Bayou Sale?

A. It depends upon the current.

Q. On an average?

A. It would take—it takes on an average all day, and she don't work any eight hours, she works as long as they can.

Q. Well, how long would it take to go from Portage to above Bayou Sale lateral?

A. With twenty booms, she usually makes it in six or eight hours on an average.

Q. That is a little over a mile below the locks?

A. Yes, sir.

Q. That is hard work?

A. Not all of it.

147 Q. What else does she do?

A. She takes those barges and goes over to the logging camp.

Q. I mean as far as the tow is concerned?

A. She is going for more timber, she goes to the logging camp, a matter of fifteen miles further, where she left the barges, and she spends one whole day there, fixing that timber to tow, and then she brings that timber down and puts it in this Bayou Portage, which takes the rest of her week.

Q. I want to get this point clear: From the entrance of the canal to above Bayou Sale, the work of the big boat is to bring a tow of maybe twenty booms up from Portage entrance to Bayou Sale lateral?

A. Yes, sir.

Q. Her work in the canal consists of——

A. After towing the barges out.

Q. That is all she has to do with the towing of the logs into the canal, her part of it consists of bringing them from Portage up to Bayou Sale lateral?

A. Yes, sir.

Q. Am I right on that?

A. Yes, sir.

Q. Then she goes on and does something else in connection with the logging business, but that is all she has to do in connection with towing logs from the canal?

A. Yes, sir.

Q. After they get above the Bayou Sale lateral, they are handled by the small boat?

A. Yes, sir.

Q. Why is it you used the small boat above the Bayou Sale lateral rather than below?

A. Because we have to use the small boat to get under the railroad bridges.

148 Q. If the bridges were changed, that reason would fall?

A. Not altogether; we have to have a small boat to get up and tow the timber; the Ivanhoe we find is a bit too wide now.

Q. But the chief objection to using the Ivanhoe is because she can't pass under bridges taking the tow all the way through?

A. We could use her if the bridges weren't there, but we would have to make some little changes, different arrangements, because she tows on tow line astern. When you put that line out, you can't pull a tow of timber in the locks, that is, not a full tow.

Q. The little boat tows alongside?

A. The other boat is so much smaller that she can pull a full tow in the locks, but the larger boat with the long towing line couldn't get quite as much in the locks.

Q. Then it takes all of six to eight hours bringing twenty booms from Portage up below Bayou Sale?

A. With everything favorable.

Q. They are turned over to the little boat to do what with?

A. They proceed to take that timber then through the locks up to the mill.

Q. How do they bring up the tow, how many booms do they take at a time?

A. Four.

Q. How long does it take the little boat to take four booms through the locks?

A. From there?

Q. Yes.

A. You mean, take it from where the Ivanhoe left it and put it to the mill?

149 Q. Yes.

A. Between four and five hours, if they don't have trouble with the locks, I mean by the booms being a little too wide.

Q. How long does it take them to actually pass through the locks?

A. That depends on the difference in the tide on the Teche and in the locks.

Q. Well, under ordinary conditions?

A. Anywhere between an hour and two hours.

Q. Could the big boat bring the tow closer to the locks?

A. No, sir; because she cannot get by. She has often to get into the pocket and we pull by her.

Q. Is there any piling driven anywhere near the locks?

A. Yes, sir; we have a row of piling on each side to keep the bank from caving in, and those piles have been driven close together here, they are not as wide here as they are further back.

Q. Are both boats working at the same time?

—. ——.

Q. While the little boat is breaking up the big tow and taking it through in four booms at a time, the big boat is going out after another tow?

A. Yes, sir.

Q. So they are working continuously?

A. Yes, sir.

Q. How long would a tow of twenty booms supply your mill?

A. About three and a half days.

Q. You stated that the tide you spoke of, or the current, the drainage current I believe you said, came chiefly through the Bayou Sale lateral?

A. Yes, sir.

Q. So that the tide that has been referred to chiefly as an obstruction is the tide that comes from the Bayou Sale lateral inage canal?

A. Principally.

Q. That is encountered by the big boat chiefly?

A. Only in these tows of twenty booms, which sometimes come in the latter part of the week.

Q. You are working continuously?

A. Yes, sir; but we don't work more than that, because that is out all that boat will do in one day, and we are not able to hold her this end of the canal.

Q. The little boat tows at the lower end of the canal?

A. Yes, sir; she tows as much as she can in the lower end of the nal.

Q. She has not as much power as the big boat?

A. No, sir.

Q. If she meets a head tide, she is slowed up all the way?

A. Yes, sir.

Q. But the Ivanhoe can pull against a head tide?

A. Yes, but we don't find it well to do so, because we lose time.

Q. That is, because you have the exclusive use of the canal you n pick your time; is not that the real reason?

A. We keep her busy all the time.

Q. How many of the big tows do you get up to the mill in a week?

A. You mean that the Ivanhoe tows from the camp?

Q. From Portage, how many pass through the canal in a week?

A. Booms, you mean?

Q. No; tows of twenty booms, if that is what you usually get in, twenty booms?

51 A. Sometimes she won't bring up but twelve, sometimes she finds an adverse tide, and that is all she can pull.

Q. How many on an average?

A. She might pull on an average fifteen booms, as an average.

Q. Now the mill cuts five booms a day?

A. Yes, sir.

Q. That is, approximately?

A. We may cut more than five, she has cut seven and seven and a half booms, but it depends on the timber.

Q. On account of it being big timber?

A. Yes, sir; four an a half booms will hold the mill some days.

Q. You have been speaking of averages, so as to give an approximate idea, how many booms would you say the mill would cut on an average?

A. Say five and a half booms.

Q. Then fifteen booms is approximately three days' work?

A. Yes, sir.

Q. She sometimes brings twenty booms, unless she meets an unfavorable tide?

A. Yes, sir.

89

Q. How many of those tows does the Ivanhoe bring into the canal in a week?

A. She never brings less than one of those, and it is seldom she brings two; I will say twenty booms will be an average.

Q. Will she average around sixteen?

A. Yes, sir.

Q. If she brings sixteen booms, you make about two trips through the canal in a week?

152 A. She doesn't always have time to make sixteen unless we want to bring timber in the canal before we lock our barge out.

Q. You use the Lvanhoe for a good deal of outside work beyond Portage?

A. Yes, sir.

Q. She is out there a whole lot of the time?

A. Yes, sir.

Q. And she is only in the canal most of the time during the average of six hours with the tow from Portage up to about Bayou Sale, twice a week?

A. She is in there—she spends Sundays in there, you know.

Q. You don't work on Sundays, do you?

A. Some Sundays we do; yes, sir.

Q. Is the mill run on Sunday?

A. No, sir.

Q. But the boats work on Sunday, do they?

A. Very often.

Q. I just want to get this straight so there will be no mistake about it. Take the first of the week, after she takes a tow of sixteen booms into the canal up above Bayou Sale, she has finished with the tow and goes out again about her business?

A. Yes, sir.

Q. Again, later in the week, she will come in from Portage with another tow?

A. Say Thursday.

Q. The same sort of a tow on the average, say sixteen booms?

A. She wouldn't have to bring that many, because in the meantime if the tide has not been adverse, the little boat will have brought maybe two tows up.

Q. About two tows, and the Ivanhoe's tow of sixteen booms will run the mill a week?

153 A. Not always, it depends on the timber.

Q. I mean the average?

A. Almost.

Q. You said about five and a half into sixteen, goes how many times, three, and the mill runs six days; does it run all day Saturday?

A. Yes, sir; it figures to run all day Saturday.

Q. But not on Sunday?

A. No, sir.

Q. So that a sixteen boom tow runs the mill an overage of three days?

A. Yes, sir.
Q. And another tow of the same size will run it another three ays, making the six days in the week. Now that tow from Portage above Bayou Sale consumes about six hours on an average?
A. More than that; it consumes more than six hours.
Q. You said from six to eight hours on an average?
A. Six is not an average; it will consume almost eight hours on n average.
Q. That is six hours a week that you are bringing out up from Portage to above Bayou Sale?
A. It won't do it.
Q. I thought that is what you testified to?
A. I didn't understand the question maybe, because the other day I was out there myself and she pulled a tow of twelve booms, and it took her twelve hours to do so.
Q. Did you have an adverse tide at the time?
A. Against us.
Q. Was that above Bayou Sale?
A. Yes, sir.
Q. That was in heavy rains?
A. Yes, sir.
154 Q. That is practically the drainage tide against it?
A. The current.
Q. And it is not really a tide, it is a current?
A. The tide was with the current. If it had been against the current, it would not have been as strong.
Q. And then some time the little boat helps the big one?
A. Yes, sir.
Q. The figures you have given about the little boat breaking up the tow and passing the logs through the locks is approximately correct?
A. Yes, sir.
Q. Where do you stow your timber, near the Portage, the nearest point to the Portage entrance in the canal?
A. We tie it right where they join, from there on down.
Q. That is in the Bayou Portage?
A. Yes, sir.
Q. Do you make much timber there?
A. Yes, sir; we try to keep a week's tow there, what the boat brings in this week, we log in there next week.
Q. You always have a week's supply cut down at the portage end of the canal?
A. Yes, sir.
Q. But that is not in the canal?
A. No, sir.
Q. Where is Bayou Bartholomew?
A. Bayou Portage empties into that bayou.
Q. Bayou Bartholomew is very wide where you tie your timber; is that Portage or Bartholomew?
A. Portage; we sometimes tie timber in Bartholomew.
Q. You use wide booms in making up tows?

A. We make — we try to have them 25 feet wide.

155 Q. What is your object in using a wide boom rather than a narrow one?

A. So when we lock, we can hold the timber.

Q. In other words, the limitation in the lock is not so much due to narrowness as it is to shortness; is that the idea?

A. You can use a wide short boom in the lock to better advantage than you can a long narrow boom in the lock; not only in the lock, but you can use it anywhere. We tow it sometimes in the long canal where the big boat tows, two miles long even, with 25 feet wide.

Q. That is when you have how many booms?

A. Forty.

Q. That is in the big canal?

A. Yes, sir; we can't take forty up through there (witness indicating).

Q. You are talking about what happens out in the Bayou Port [Portage] and Bartholomew?

A. Yes, sir.

Q. You bring 40 booms through there and then you break them up into half?

A. We bring it from what we call the Cote Blanche Canal, we break it into an average of fifteen booms at a time, because that is all the boats can handle coming into Portage.

By Mr. Alpha:

Q. What do you do with the balance of the time, the time that you are not towing, when the boat is out and is not towing, why is it not towing?

A. Because the tide is against it.

Q. During that time, it is bound to remain still tied to the bank?

A. Oh yes.

156 At this point a recess was taken until 2:00 o'clock p. m.

After recess.

Mr. Alpha: May it please the Court, we have suggested to the other attorneys that Mr. Ben Lawless and two other witnesses combined, that is, Mr. Lawless, who cuts the timber in the woods and puts it into booms, and the other two men who actually take it to the mill, will give evidence to corroborate Mr. Gardner, who has just testified, and we would dispense with their production. We have submitted that to them and they have said they would dispense with them.

Mr. Dresner: Of course the testimony of the three witnesses, both on direct and on cross-examination, would be substantially the same as Mr. Gardner.

The Court: That helps some.

W. B. SMITH, JR., sworn and examined as a witness on behalf of e Defendant, testified as follows:

Direct examination.

By Mr. Alpha:

Q. What is your name?
A. W. B. Smith, Jr.
Q. Mr. Smith, state whether or not you were summoned to Court by the plaintiff and by the defendant?
A. I was summoned by the United States, that is, I was subpœnaed, and I had a conference with you at Franklin en you telegraphed for me.
Q. And I requested you to come to New Orleans to testify?
A. Yes, sir.
Q. Are you the Mr. W. B. Smith who made the survey of the ntracoastal Canal for the United States Government in about 1912?
A. Yes, sir.
Q. In what capacity did you make that survey; as an officer of the vernment?
A. I was just one engineer in charge of a party.
Q. What length of territory did you survey?
A. From Bayou Teche over to the Vermilion River by way of the anson Canal.
Q. State whether or not you superintended the construction of any rtion of the Intracoastal Canal?
A. I supervised the construction of the section from Vermilion ay to Grand Lake, and the section from Calcasieu River to Sabine iver.
Q. What lengths are those spans?
A. The Calcasieu to Sabine span is 22½ miles, and the other—I have forgotten exactly what mileage it is.
Q. Those two were actually cut by the United States government?
A. Yes, sir.
Q. What is the width of the canal there?
A. 5 feet deep, 40 feet bottom width.
Q. State whether or not any provision was made for one boat to ss another?
A. There was provision made in the section from Calcasieu River to Sabine River, by digging turning basins about three miles apart, possibly four, along this entire route.
Q. How long were the basins?
A. I have forgotten the exact dimensions, but I think they were 00 feet long.
Q. How wide were they in their widest place?
A. 100 feet on the bottom.
Q. State whether or not that is ordinary sea marsh?
A. Ordinary what?
Q. Sea marsh?
A. Well, you mean where the turning basins were?

Q. Yes; that whole stretch of country?

A. Well, the canal extends through sea marsh and also through some higher ridges about 12 feet above the gulf.

Q. Is there any considerable commerce in that canal?

A. Yes, sir.

Q. What kind of commerce?

A. Mostly boats and barges.

Q. State whether or not the turning pockets were sufficient for that kind of commerce?

A. Yes, sir; I think they were.

Q. And state whether or not they would be sufficient for timber operations?

A. Well, I don't know that I could exactly state that; I don't know just exactly what the requirements are for timber operations.

Q. Say from one thousand feet to one mile in the length of the tows?

A. No, sir; you couldn't put a thousand foot raft in one of them without tearing it to pieces, tearing the raft to pieces.

Q. About what is the extent of the commerce on this canal that has the turning pockets?

A. Well, I don't remember just what the commerce was in that canal.

159 Q. Would it equal ten tons a day?

A. No, sir; I don't think it would.

Q. Do you know the Hanson Canal?

A. Yes, sir.

Q. Did you actually survey it?

A. Yes, sir.

Q. Did you establish all of the stations and distances that have been referred to upon the blue prints and maps and government documents?

A. Yes, sir.

Q. State whether or not that canal contains any of these passing places?

A. No, sir; I never noticed any except in lateral canals that go into it down at the lower end of it.

Q. State whether or not that would be of any benefit to a person having a thousand foot raft?

A. Well, not unless you happen to pass them at that particular point; I should imagine you could go into the laterals. I never investigated to see what the depth was, so I can't say how much they could be used.

Q. If the defendant company carries through its canal a hundred times as much as the commerce going through the canal you refer to, and 90% of it is saw logs, state whether or not, in your opinion, the company and the public, inclusive of other owners of timber, could use the canal together?

A. Well, a hundred times the commerce that existed on the waterway?

Q. A hundred times the commerce carried on through this Calcasieu cut, where the passing pockets were cut?

A. Well, I don't know that the canal would be ample for that much commerce, especially in the way of logs, rafts and things of of that kind.

160 Q. If the defendant company's saw mill cuts 75,000 feet a day, all of which must go through this canal, and its other boats and barges necessary to carry on the business, state whether or not that is about all the canal in its present state can carry?

A. I don't know exactly how much 75,000 feet of timber would occupy, that is, I don't know, I am not familiar enough to tell just how long it would take you to get that timber through 75,000.

Q. State whether or not there is very much more marine commerce in the Hanson Canal section of the Intracoastal Canal than in the section where you cut these passing pockets?

A. Marine commerce?

Q. Yes.

A. Well, no, sir; I don't think they would have as much marine commerce in the Hanson Canal as you have through that section of the Intracoastal Canal.

Q. Well, maybe I call it by the wrong name; any kind of floating commerce?

A. Outside of logs?

Q. Any kind that uses water for transportation purposes.

A. Well, I think you would have an equal amount anyhow through the Hanson Canal that you would have through the waterway for barges and things of that kind; I don't know that it would exceed that on the inland waterway.

Q. You speak of the public, outside of the Hanson Company?

A. Yes, sir.

Q. Now when you add the Hanson Company's use or commerce to it, to what extent would this canal exceed in carrying the balance of the inland water way?

161 A. Well, I don't know exactly just how much it would exceed it, or would exceed it.

Q. Do you know a stream that is touched by the inland water way that is as important or prominent as the Bayou Teche?

A. Well, yes, sir; I suppose the Calcasieu River and the Sabine River are about as important as the Bayou Teche.

Q. You think that they would equal the Bayou Teche in point of tonnage, do you?

A. Well, I think they would, judging from the amount of commerce that I have seen in Bayou Teche.

Q. You include in Bayou Teche's commerce the logging that is carried on it for the mills that are situated on that stream, do you?

A. No, sir; I didn't include that, because that is only a small portion of logging, as I understand, from the canal down to your mill, to the Hanson Company mill.

Q. I mean of the number of mills other than the Hanson mill, using the Teche and not the Hanson Canal?

A. I don't know but one mill that uses it outside of the Hanson Lumber Company, to my knowledge; that is away up in St. Martin.

Q. You don't know then that there are a number of saw mills on Bayou Teche between St. Martinville and Garden and Garden City?

A. Using it for logging; no, sir.

Q. In surveying the Hanson Canal, do you recall any declarations made by your superior officer concerning the widening of the canal?

A. No, sir; I don't recall any, except, of course, the Hanson Canal, as we found from cross-section exactly what would be required in the inland water way.

Q. What would have been required.

A. Five feet deep and forty feet wide on the bottom.

162 Q. What is the difference between that measurement and the present Hanson Canal?

A. Well, my recollection of it is that the present canal is only about 40 feet on the top. I don't know just what bottom width it has got. It would be 5 feet deep.

Q. What slant did the Government cut the balance of the inland waterway by?

A. By a slant of one foot horizontal to one foot vertical in the low ground, that is, anything less than 4 feet, and when it got into an elevation more than 4 feet, it gave it two horizontal to one vertical.

Q. Suppose the Hanson Canal had been widened to conform to the same slant as the balance of the cut made by the government, how wide would it make the Hanson Canal at the water surface?

A. I don't know exactly, but judging roughly I would say about 60 feet.

Q. Wouldn't it be nearer 68 or 69 feet?

A. You would have to figure that out to tell just exactly what it would be; with a depth of 6 feet, it would be about 68 feet.

Q. You mean with a depth of 6 feet at——

A. Figured on an ordinary tide of one foot, yes.

Q. Now that would be the width, without any reference to these waiting places at all?

A. Without any reference to what?

Q. To these wide passing places?

A. Yes, sir. With high land it would be one slope, and in low land of course it would be less.

Q. Now take the water's edge, how wide is the narrowest portion of the canal you cut, even through the marsh?

A. I don't exactly recall just what that width would be.

163 Q. Wouldn't it be between 8 and 12 feet wider than the Hanson Canal now is?

A. I don't remember exactly just what that width was.

Q. State whether or not you ever encountered any heavy weather from the Gulf side while traveling on the Hanson Canal in 1912, and if so, what?

A. Yes, sir; a tidal wave some in June, 1912; we had a depth of about—a rise of about 6 feet as near as I can remember; I didn't get the exact stage of that tidal wave, because it came up during the night and I was away from the boat on business.

Q. How do you estimate the height then?

A. From the drift that was in the trees all matted round; you ld see it had come up to a height of about 6 feet.
Q. That you mean is six feet above what stage?
A. Above ordinary tide.
Q. Do you establish the ordinary tide stage as one of your duties s government engineer?
A. Yes, sir; we had established gauges all along the canal and all rough the bayou as the survey progressed.
Q. How long did that water stay up?
A. Well, it gradually went down, my recollection, about the 17th June the water was still about three feet deep through that section.
Q. How many days after the crest of the flood was that?
A. About a week.

Cross-examination.

By Mr. Mooney:

Q. Mr. Smith, how long were you in the government service?
A. About thirteen years.
Q. When did you sever your connection with the Engineers?
A. On the 15th of September, 1919.
Q. You have prepared drawings, you say, of this canal, cross-ctions, and did you ever make an estimate of the cost, the original st, of the canal?
A. To determine the cost of the present Hanson Canal, do you ean?
Q. Yes, sir; the original cost of the present Hanson Canal?
A. Yes, sir; I think so.
Q. Do you remember what that figure was?
A. No, sir; I don't recall exactly what that was.
Q. Do you remember whether it was more or less than $65,000?
A. No, sir; I don't remember.
Q. You are the W. B. Smith, Engineer, who prepared this (hand-ing document to witness)—I don't know what you would term it?
A. Cross section.
Q. Drawing of cross sections?
A. Yes, sir.
Q. Now the figures indicated there were made by you?
A. Yes, sir.
Q. And the results of surveys made by you?
A. Yes, sir.
Q. And they are correct?
A. As near as I know, yes.
Q. And that would show the work, that would show the amount of excavation, wouldn't it, in the canal?
A. Yes, sir.
Q. This is a blue print of a drawing of the canal by you (hand-ing document to witness)?
A. Yes, sir.
Q. That is based upon a survey actually made by you?

A. Yes, sir.

Q. Now you spoke of pockets. Did you see those indicated here, so that you can point them out to the jury, passing pockets in the canal?

A. Those refer to the inland water way.

Q. Well, have you any in this sketch of the Hanson Canal which you saw?

A. No, sir; I don't see any passing pockets, regular dredged pockets, as I saw those laterals that were dredged into the canal.

Q. Those are short laterals?

A. Yes, sir.

Q. Well, they served the purpose of, while they are not, passing pockets; a boat could go into any of those and wait till a tow got past?

A. I don't know; I never investigated the depth, but I think a boat could go in and out.

Q. You know of no other intent or purpose than that do you?

A. I don't know exactly; I think they were dredged for the purpose of getting timber from other sections that were out of the reach of the Hanson Canal, but I am not sure that they were.

Q. You are not sure. You are pretty familiar with this whole subject matter, aren't you, Mr. Smith?

A. Yes.

Q. And did you have charge, or were you associated with any superior officer in connection with the negotiations for the purchase of this canal?

166 A. I had charge of the work and did most of the—in fact I think I made all of the estimates in connection with that work.

Q. Well, last summer some time, do you remember seeing Mrs. Lawless, and presenting to her, either alone or in company with some one else, a deed for her signature?

A. Yes, sir; I went over with Colonel Dent to Franklin for that purpose.

Q. Did you see Mrs. Lawless?

A. Yes, sir.

Q. Did you take the deed over there?

A. I think I had the deed; we went over there for that purpose I don't remember seeing the deed actually produced.

Q. Well, did you discuss the sale and the purchase of the canal?

A. Yes, sir.

Q. With Mrs. Lawless?

A. Yes, sir.

Q. Was the deed signed at that time?

A. No, sir.

Q. Do you know why it was not signed?

A. Mrs. Lawless objected to certain titles and Georgia Brown's title was one of them; I think that was the principal objection.

Q. In other words, there was some defect in the title that had been suggested, and that was the stumbling block, as you recall it?

A. Yes, sir.

Q. Was any other reason given why Mrs. Lawless wouldn't sign the deed?
A. No, sir; I don't remember of any other.
Q. Now, when was that?
167 A. Let's see; I have forgotten just exactly what month that was in.
Q. About a year ago?
A. About, yes.
Q. What was the purchase price named in that deed?
A. $65,000.00.
Q. Did you ever discuss the matter with Mrs. Lawless and the officers of the company before?
A. No, sir; I didn't, personally.
Q. Did you know what the agreed purchase price was or what had been agreed as the price for the purchase of this canal?
A. Yes, sir.
Q. It was generally understood?
A. Yes, sir.
Q. And understood by you?
A. Yes, sir.
Q. And when this deed was presented to Mrs. Lawless for her signature, she didn't object to the price?
A. No, sir.
Q. But the question as to whether or not she could give a warranty deed on account of the minor child's so-called interest in the canal was what prevented the closing of the deal, so far as you know?
A. Yes, sir.
Q. Now, you know that by the act under which the intracoastal canal is to be constructed there would probably be something in excess of $50,000 for the improvement of the Hanson Canal, if taken over by the government?

Objection.

Mr. McCaleb: I object to that question. What is the purpose, Mr. Mooney?
168 Mr. Mooney: Well, we are talking about its present condition and whether or not the government can utilize it. They have a fund by which certain improvements can be made to the end that everybody can be served by it. I think it is relevant, if your Honor please, to show that there is an appropriation involving a large sum of money by which improvements can be made, so as to bring about the necessary essential immediate improvements, in order to make it open to the public and at the same time not deprive the present owner of the use of the canal.
Mr. McCaleb: The question now before the jury is merely one of value.
The Court: Well, you also have the question of damages based on the inconvenience that you would have to suffer. I think that it is relevant to show the improvements can be made right away.

Mr. McCaleb: I except to the ruling of the Court and reserve bill.

Q. Read the question.

(Question read).

A. Yes, sir; there was an excess over the $65,000; that is my recollection of it.

By Mr. Alpha:

Q. Mr. Smith, how much of the $200,000 under the Act of Congress of 1907 have been consumed, to the best of your recollection
A. How much of the $200,000?
Q. Yes.
169 A. I don't remember, but I think something like $115,00 is left available for this, that could be expended on this wate way, to my recollection of it; I am not positive, though, as to tha whether that is correct.
Q. That includes the $65,000 and the excess that you refer to?
A. Yes, sir.
Q. You don't think you could be mistaken about having gone see Mrs. Lawless?
A. No, sir.
Q. State whether or not you ever heard any of your superior of cers discussing with Mr. Lawless or Mr. Edward A. Hanson, th proposition of widening the canal at the time it was taken over?
A. No, sir; I never remember hearing any discussion of tha kind.
Q. Did you discuss with the officers themselves the fact that would be widened?
A. No, sir; I don't remember discussing it.
Q. Well, do you recall him having said that it would be made th same as the balance of the canal, or that passing pockets would b cut or any other things?
A. No, sir; I don't remember, I don't recall anything of tha kind.
Q. How long were you in the canal on the survey say withi five or six months of Bayou Teche?
A. I guess about a month; possibly a month and a half.
Q. And it was during this time that this tidal wave of six fe came in?
A. Yes, sir.

170 T. C. LAWLESS, sworn and examined as a witness on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Alpha:

Q. What is your name?
A. T. C. Lawless.
Q. Mr. Lawless, are you an officer of the Hanson Company?
A. I am.
Q. Were you an officer in 1906 and from that on to now?
A. Yes, sir; I am vice-president of the Hanson Lumber Company.
Q. State whether or not you knew any of the officers of the engineering department of the government who were concerned in cutting the intracoastal canal or acquired the Hanson Canal as a part of it?
A. I knew Lieutenant Colonel Beach and Major Schultz.
Q. State whether or not they made any declaration to you concerning the widening of the canal as a condition of its purchase, and in that connection, state the conversation in your own way.
A. Colonel Beach, when he spoke about purchasing the canal, he stated that they would not in any way interfere with the handling of timber through there, and that until the canal was widened about a hundred feet that we would have the priority or the privileges of going through in preference to anybody else, and that the timber interest, or the towing of timber through there would not be interfered with, and it was under that agreement that we agreed to sell the canal.

171 Q. State whether or not that was previous to the adoption of a resolution by the Hanson Canal in 1913?
A. Yes, sir; it was previous to, at the beginning of the transaction.
Q. State whether or not you informed Major Schultz of that agreement?
A. I think that in Major Schultz's office, after Colonel Beach, we talked over that agreement, and he acquiesced in the idea of allowing the Company to not be interfered with in the towing of timber, and that they would widen the canal to one hundred feet; that was the understanding.
Q. Now state what Colonel Beach meant by the canal, whether or not it is the Hanson Canal, beginning at Bayou Teche and running four and two-thirds miles, or any particular portion of the canal, or, in other words, is it the whole canal involved in this suit or not?
A. The canal from the portage to the locks, the canal as a whole to be widened; that was the canal that we were selling.
Q. State whether or not your company would have authorized you to sell for $65,000 other than with that understanding of the widening?

A. Without the agreement to be able to tow our timber through there, it would have been an absurd thing for us to offer the canal at any price.

Q. State whether or not the Southern Pacific Railroad or the Hanson Company built the railroad bridge.

A. The Albert Hanson Lumber Company paid every dollar of the cost of it and the Southern Pacific Company had the management of the construction.

Q. Who built the public road bridge across the canal?

A. The Hanson Lumber Company.

Q. At its expense?

A. At its expense.

172 Q. And you say that had it not been for the agreement about the widening, the Company would not have agreed to sell the canal to the Government at all?

A. No, sir; we couldn't afford to have sold, if they blocked the towing of timber through the canal.

Cross-examination.

By Mr. Mooney:

Q. Mr. Lawless, how long have you been connected with the Company?

A. Since 1876.

Q. For a time you were the general manager?

A. Yes, sir; since I was elected General Manager in 1914.

Q. And how long were you general manager; are you still?

A. Never had any election since.

Q. You were elected once and for all, is that the idea?

A. I don't know.

Q. Now this canal was open to public use for a while?

A. No, sir—that is, we allowed some boats, pleasure boats and such, to pass through, but it was never open to the public use.

Q. In other words, with your permission they used the canal?

A. With our permission; we let them go through.

Q. They always had to ask permission?

A. They didn't always do it, but they were supposed to ask to go through.

Q. Do you know what the canal cost?

A. I do not know.

Q. Do you know why the price of $65,000 was fixed?

173 A. Because it was figured out with the Government auditor, their man came and went over it with our bookkeeper and made up that price as the cost of the canal.

Q. And that was never disputed as the cost of the canal?

A. No, sir; never disputed.

Q. You evinced no inclination to dispute that as a fact, did you?

A. Not at that time; no, sir.

Q. Now in the resolution in which you proposed to sell the canal, this is called in: "Be it further resolved that the grantor, the Albert

Hanson Lumber Company, Limited, and its assigns, shall always have and enjoy the free access, ingress and egress to and from the said Hanson Canal, through the lateral canals now constructed and used by the Albert Hanson Lumber Company, Limited, in its timber operations and lumber business and for all such commercial purposes as the said lateral canals may be used for hereafter, even after the said Hanson Canal shall have been converted into a public inland waterway, provided said use of the canal is not contrary to or different from that of public navigable highways, and provided said use shall be under such regulations as may be prescribed by the Secretary of War."

A. What is that; the lateral canal?

Q. No; that refers to the Hanson Canal and the use to be made by your company of it, even after it becomes the property of the Government.

A. Well, this agreement about the widening of the canal, and the use we were to have——

Q. Wait a minute——

A. —the privileges we were to——

Q. Wait a minute; I want to be perfectly fair, I may not
174 read English just as my friends on the other side—"Be it further resolved that the grantor, the Albert Hanson Lumber Company, Limited, and its assigns, shall always have and enjoy the free access, ingress and egress to and from the said Hanson Canal, through the lateral canals now constructed and used by the Albert Hanson Lumber Company"—you mean that does not include the use of the canal?

A. That means that the lateral canals that was taken over—that the lateral canals would not be stopped up or the use of them destroyed to the Hanson Lumber Company.

Q. The Hanson Lumber Company?

A. Yes, sir. That is the lateral canals that speaks of.

Q. Did you understand when you passed that resolution that there was anything in it that prevented you free use of the Hanson Canal?

A. No, sir; that was—the idea of that thing in there was in reference to the lateral canals coming into the main canal, that they should be in no way obstructed or shut off so that we wouldn't be able to use these lateral canals into this main canal.

Q. That is just what I am trying to get at; as part of the general public, you understood, without putting it in the contract, that if the Government took it over, you would have the right to use the canal proper?

A. Yes, sir.

Q. Didn't have to put that in?

A. We didn't have to put that in.

Q. But you did put in writing that all of your lateral canals leading to and from the Hanson Canal could be used for the same purposes that they were used for at the time of the passage of this resolution, provided that they were not used for any purpose con-
175 trary to or different from that of public navigable highways; now that is your own resolution, is it not?

A. I don't exactly understand that. The resolution was this, my understanding of it was that in order to prevent the obstruction or the cutting off or in any way interfering with the lateral canals coming into the main canal, that that resolution was passed, and it had no reference to the main canal at all.

Q. But you would have free access, ingress and egress?

A. Through the lateral canals into the main canal.

Q. And to the main canal and around?

A. Oh, yes. You mean through to the main canal? Well now, the agreement about the main canal being widened and about our privilege, that we were to have in the main canal, was absolutely verbal with Lieutenant Colonel Beach and Major Schultz. Now we considered that an agreement of that kind with the Government of the United States, or through their officials, would be handed from one to another as they came in power, and not only that but be considered binding.

Q. Did you read the answer that was filed in this suit?

A. Eh?

Q. Did you read the answer that was filed in this suit?

A. No, sir.

Q. You don't know whether anything was sail about that hundred foot canal or not?

A. No, sir; I never read the files in the suit at all.

Q. And although you considered it necessary to put every thing else in writing, in your dealings with the government, you took the government's word that it would treble the width of the canal?

176 A. Well, they said they would do it, and the idea was this that Lieutenant Colonel Beach said by putting in things of this kind and requiring them immediately to go to work and appropriate the money to widen that canal, that it would be a damper on putting the canal through, on getting the canal through, putting difficulties to getting the canal through.

Q. Then he himself suggested some possible hitch in doing that, didn't he, if he said that?

A. That is what he said.

Q. They suggested——

A. They didn't want any more writings or obstructions to the canal, because he wanted to get it through in his time.

Q. And what he said didn't suggest to you then that perhaps some successor to him might find it difficult to get authority to widen the canal to 100 feet?

A. No; I don't know what he meant, that was just a talk after the thing was settled, the reason why he said he wanted—it was just an explanation of not having a verbal agreement in writing.

Q. Now, Mr. Lawless, you were quite interested in this inland water way, weren't you?

A. Yes, sir; I am yet.

Q. You are yet?

A. Yes, sir.

Q. You believed that the Hanson Canal is the logical course do you?

A. I did.

Q. For the canal to follow?
A. I did.
Q. You think the government ought to expropriate it?
A. No, sir; I don't think the government has any right to expropriate any private property without — of that character.
177 Q. When did you change your mind about the government expropriating it?
A. I never changed my mind.
Q. You were willing to sell it a year ago, weren't you?
A. We were willing to sell it with that understanding, and would be willing today.
Q. Now do you know of any letter or any suggestion that has ever been made before the trial of this suit, that the agreement to sell for $65,000 was predicated upon any understanding that the canal would be widened to 100 feet?
A. Yes, sir; that was the understanding when that agreement was made.
Q. It was the understanding between the people who are here and between people who are not here, but can you point to a single word of writing in all the correspondence that has been had about this matter?
A. I don't think we have any correspondence on that at all; we had very little correspondence with the office, because we came down and did our business mostly in the office.
Q. Hasn't there been a lot of correspondence about the title?
A. There has been some about the title, that is all in one package you have there.
Q. And there has been a resolution by the board and deed has been prepared and all that, and you don't know of the existence of a single word or figure referring to this understanding which you spoke of today?
A. No, sir.
Q. The widening of the canal to 100 feet?
A. I don't know; there might have been some correspondence to that effect, but I don't know.
Q. You never saw it?
178 A. I don't know if I have seen it, I don't remember.
Q. Mr. Lawless, you have stated that you were very much interested in this inland waterway, and that you still are. Did you keep posted on the action of Congress in regard to appropriations and things of that sort for this work?
A. No, sir; not within the last four years; I have been away from business altogether, I have been up in another section of the country, in another business.
Q. Well, up to the date of the adoption of this resolution in 1913, you had kept very well posted, hadn't you?
A. Yes.
Q. Well, didn't you know the character of canal which Congress authorized to be put through?
A. What?
Q. Didn't you know from your study of the situation and your interest in the matter and your reading of the acts of Congress, if

you read them, the character of waterway which Congress directed should be built; didn't you know that?

A. Yes, sir; but we have always been fighting to get nine feet bottom and 100 feet width all through the whole intracoastal waterway.

Q. Well, you were fighting for that, but did you know whether the Congress adopted your views?

A. Some places they did.

Q. How about down your way; you were particularly interested in that?

A. Our way has not had much done to it at all, the intracoastal canal has been almost neglected.

Q. There was some legislation on it, wasn't there?

A. Yes, sir.

Q. Did you read that legislation?

179 A. I don't believe I have.

Q. You didn't know that it provided for a 40 foot canal?

A. I know 40 feet bottom and lateral, but, as I say, the canal, the immediate canal there, was handled by us as another proposition altogether from the intracoastal canal.

Q. You knew it would be part of the intracoastal canal?

A. Knew it would be part of it, yes.

Q. And you were selling it with that purpose in view, were you not?

A. Huh?

Q. You sold it with that purpose in view, making it part of the Intercoastal?

A. Yes, sir.

Q. And didn't you know on the date this resolution was adopted in 1913 that prior to that date Congress had provided for the waterway and this intracoastal canal there in your district to be forty feet wide at the bottom?

A. I knew the resolution to that effect, but I then thought, and believe yet, that Major Schultz and Lieutenant Colonel Beach could authorize that two or three times—whatever it is—widening to 100 feet.

Q. Well now, in this resolution, you refer to Act of Congress approved July 25, 1912, entitled "An Act improving waterway from Franklin to Mermentau, Louisiana." I take it that, as an officer of the Company, you must have been familiar with the provisions of that act when this resolution was adopted?

A. Well, I guess I kept up with it at the time, but I don't remember now the wording of it, because I have lost interest in that part of it.

180 Q. And you think that at the time this resolution was adopted, you know what the provisions of this act of July 25, 1912, were, they were referred to, the act was referred to in these very resolutions; is that your answer?

A. I know that, with Lieutenant Colonel Beach's approval, and Major Schultz, that that canal could have been widened to 100 feet

n that distance, and I believe that to be a fact now, you could widen he canal where it was absolutely necessary to 100 feet.

Q. Now you were present during the negotiations with these sev- ral gentlemen of the engineer's office; when was the last time you ere present at any discussion concerning the transfer of the canal to he government?

A. Let's see; I don't remember; Major Schultz died.

Q. When was the first time you ever heard of any expropriation roceedings?

A. I don't remember.

Q. You hadn't heard it up to the beginning of this year, had you?

A. I don't remember.

Q. You had never discussed expropriation with any of the en- ineers, had you, at any time?

A. The engineers?

Q. Yes.

A. I don't think so.

Q. In other words, you were just going to transfer the canal with- ut the necessity of expropriation, weren't you?

A. Expropriation?

Q. I mean this suit, what is called a condemnation suit.

181 A. Why, I didn't know anything about this until the day before yesterday.

Q. The day before yesterday?

A. Yes, sir.

By Mr. Alpha:

Q. Mr. Lawless, I show you report of the United States engi- neers (handing document to witness on the Intracoastal Waterway, dated Washington, January 15, 1914——

Mr. McCaleb: April 2, 1912, just before that act was passed.

Mr. Alpha: Now let us see—what have you got, Mr. Stenographer —just change it to April 2, 1912.

Q. —and I call your attention to the paragraph 19, which reads as follows, on page 16 of that report, "The Special Board regards the Hanson Canal route as the best between Bayou Teche and Bayou Carlin, after which, in the order given, it prefers the Centreville, Franklin and Jeanerette Routes. The Special Board recommends a canal 7.15 feet deep, with a bottom width of 75 feet from Bayou Teche to Bayou Carlin, the preference being given, in the order named, to the Hanson Canal, Centreville, Franklin and Jeanerette routes, and from Bayou Carlin to Mermentau by a route north of the lakes" and so forth. State whether or not if that canal were cut on a slant that Mr. W. B. Smith, Junior, referred to as a witness, of two for one, that it would be more than 100 feet wide at the water's edge?

A. Let's see. 8, 16, 32, then 75—it would be about 107 feet on the water's surface, if it was cut at a 75 foot bottom and two to one slant.

182 Q. Now do you recall any width of bottom or top or slo
that the government officers discussed with you, or do yo
recall only the approximate width as a water way?
A. The discussion was only as to the width of the canal at th
water line; that, as I understand it, was 100 feet.

Offer.

Mr. McCaleb: In connection with Mr. Lawless' testimony, counse
for defendant offers, introduces and files in evidence House Documen
No. 610, House of Representatives, 63rd Congress, Second Sessio
being a letter from the Secretary of War transmitting the report o
the engineers of the Chief Engineer relative to the Intracoast
Waterway, and referred to in the Act of Congress of July 25, pa
ticularly page 16 of said report, paragraph 19, and the remainin
portion of paragraph 19 on page 17.

Offer.

Mr. McCaleb: Counsel for defendant also offers, introduces an
files in evidence the reports, House Document No. 610, 63rd Co
gress, Second Session, particularly on pages, that portion of the r
port on pages 42 and 45 down to the end of the first paragraph o
page 46, being the report of the Chief Engineer, and in the letter a
dressed by the Secretary of War.

Offer.

Mr. McCaleb: Counsel for defendant also offers, introduces and fil
in evidence the letter of the Secretary of War, of date February 1s
1907, being House Document No. 640 of the 59th Congress, Secon
Session, and referred to in the act of March 2, 1907, bein
183 the letter of the Secretary of War transmitting report of e
amination of project for interior waterway from the Ri
Grande to the Mississippi.

Offer.

Mr. McCaleb: Counsel for the respondent offers, introduces an
files in evidence certified copy of the charter of the Albert Hanso
Lumber Company, by act before J. Sully Martel, Notary Publi
Parish of St. Mary, of date 21st day of February, 1895.

EMMET ALPHA, sworn and examined as a witness on behalf of th
defendant, testified as follows:

Direct examination.

By Mr. McCaleb:

Q. What is your name?
A. Emmet Alpha.

Q. Mr. Alpha, you are one of the attorneys for defendants in this
ase?
A. Yes, sir.
Q. Did you have any conversation or conference with anyone
epresenting the government or other persons with reference to the
atters in hand?
A. I did have, in the presence of Mrs. Lawless and out of her pres-
nce, several conferences with Major E. J. Dent, who testified as a
itness in this case. Major Dent came to Franklin—that is to Gar-
en City—to have a conference with Mrs. Lawless, and she requested
e to be present at the conference. In that conference the price of
65,000 was referred to by Mrs. Lawless, speaking to Major Dent at
e time about widening of the canal or whether or not the canal
would be widened. Major Dent merely referred to the fact
34 in answer to that question that he had no right to make a
statement that would be binding upon the Government.
fter that declaration by Major Dent, Mrs. Lawless became very
uch alarmed about the fact that, in taking over the canal, the gov-
rnment might not widen it, or that there might be a serious com-
lication, and I went to Washington on behalf of the Company for
e purpose of ascertaining whether or not it could be widened. I
tisfied myself from the course I pursued at Washington that it
ould require legislation by Congress, and returned to New Orleans.
rs. Lawless was out of the city at the time I left for Washington
nd returned a little before I got back, and we met at Mr. Mooney's
ffice. She and I and Mr. Mooney and Mr. Dresner, the two attor-
eys representing the government now. We informed them of the
ct of the meeting in time to have Colonel Dent present, but the
tuation was such that he could not be present, as I understood. As
result of that conference, that is, Mrs. Lawless made certain declara-
ons, Mr. Mooney some, the other attorneys some, and I some. Mr.
ooney requested that I put the company's proposition in writing, in
e hope that the company would not occupy the position of resisting
condemnation suit brought by the United States Government,
hich he was very anxious to compromise if he could. (Mr. Dres-
er, have you got my letter of April 23—I have a copy but I would
ther read the original—that is a two page letter.) I will read the
ntents of the original:

35 "Franklin, Louisiana, April 23, 1920.

Mr. Henry Mooney,
United States Attorney,
New Orleans, Louisiana.

EAR SIR:

Pursuant to my promise in connection with the conference had
yesterday at your office between you and Mr. J. D. Dresner, on
e one side, for the Government, and Mrs. Maggie Hanson Lawless,
s president, and myself, on the other, for the Albert Hanson Lum-
r Company, with regard to the proposed proceedings to be filed by

the Government for the purpose of having the Hanson Canal con
demned to public use, the position occupied by the Albert Hanso
Lumber Company is such that it would be compelled to resist th
Court proceedings for the following reasons:

1. Because the present understanding of the Company is that th
Government proposes to condemn for ownership in itself and in
stant possession for public use, and

2. Because the present width of the canal is only forty feet, th
minimum of twenty-five of which are used by the Company in tow
ing its timber to its saw mill situated on Bayou Teche from fourtee
to twenty hours of each day, and

3. Because the Company logs its sawmill exclusively through thi
canal and cannot reduce the time it now consumes in towing timbe
through the canal by the application of greater force by its tow
boats or by any other means, and cannot reduce the width of th
rafts of timber, and

186 4. Because the Company and the public in general cannot
use the canal at the present width of forty feet because of th
excess of 15 feet beyond that space necessarily occupied by the com
pany is the maximum, and is too narrow for public navigation pur
poses; and

5. Because the company, in proposing to transfer the canal to th
Government, contemplates a continuation of its exclusive use fo
supplying timber to its saw mill until the Government had widene
the same to 75 feet by the depth of 7 feet, which dimensions th
company was informed by representatives of the engineering depart
ment of the Government would be contained in their recommenda
tion of the acceptance of said canal as a part of the intercoastal cana
route, if the same were, in fact, recommended by them; and which
dimensions were subsequently recommended, as appears by the pub
lic records of the Government, (Doc. 640, 59th Congress), and

6. Because the stoppage of operations by the company's saw mil
for even a month, which cuts 75,000 feet of lumber per day, would
be injurious very much beyond the net profit it would thus lose
because of the disorganization of its labor supply in the present
labor shortage that has prevailed through this section for the las
three years, and which continues to grow more acute; and

7. Because the company has a timber supply on the west side o
Bayou Teche, which can be towed to a saw mill only through said
canal, that will require about 15 years to manufacture into lumbe
at the capacity of 75,000 feet per day, wherein the stoppage o
operations or any material interruption therewith consequen
187 upon opening said canal to public use at its present width
would enter as a factor in damages due by the Governmen
to the company, for a time in the future (to end with subsequen
widening that the Court could not know during the progress of th
trial; and

8. Because the Court, under those circumstances would not be legally authorized in rendering judgment of condemnation against the company, for the want of knowledge of the extent of its future losses on which to base the price of the transfer; and

9. Because the Government possesses the right of condemnation against adjacent proprietors for canal purposes (not possessed by the Company), the damage to whom can be fixed with judicial certainty, thus showing the want of necessity in condemning the Hanson Canal, that will again defeat the power in the Court to do so.

But in order to avoid the proof of the above facts in its defense, if sued in condemnation, or any other proof that will prevent the adoption by the government of what appears to be the course most favored for the intercoastal route, the Albert Hanson Lumber Company will conesnt to become defendant in the condemnation proceedings, and will interpose no objection thereto, upon the following conditions:

a. That Miss Georgia Bentz, a minor, who may own 1/24th of the canal strip, and Mr. J. W. Foster, who claims certain rights in said canal, be joined as co-defendants with the Company under allegations which leave unfixed the extent or character of their interests, and alleging only the possibility of their existence—that they may appear and prove the same or not as they shall elect; and

188 *b*. That your bill of complaint ask for judgment of immediate condemnation, but with reservation of the right of joint possession between the Government for improvement purposes and the company for logging purposes, to the exclusion of the public, for such time until the canal be made the minimum width of 75 feet and the minimum depth of 7 feet, at the cost of the Government; and

c. That the Government place in escrow, for the benefit of the company and any other party who may prove an interest therein, the sum of $65,000, to be taken over by it or them after the canal shall have been enlarged to the dimensions above stated, and taken possession of by the Government as a public waterway, to be proved by any party to the proceedings as a part or continuation of that proceeding; and

d. That the right of possession by the company be subsidiary to that of the Government to the end only that the Government shall have the right of preference after improvement operations actually shall have been commenced by it; and that if exclusive possession of all or any part of said canal shall be considered by the agents of the Government to be necessary after the commencement of improvement operations, the company shall entirely abandon possession; and

e. That the right to demand exclusive possession for said improvement purposes shall not exist in the Government until a reasonable notice to that effect, to be fixed by amicable agreement before suit is

filed, be given to the company, to the end that its logging apparatus be removed into other timber independent of said canal; and

189 *f.* That the company shall have the same rights of ingress and egress through its lateral canals, as contained in the writing prepared by your office in 1918.

If your Department will bring the suit substantially as above indicated, alleging that the company now is in exclusive possession, my belief is that the other proposed co-defendants will make no appearance; and the judgment in condemnation will convey a perfect title to the Government for improvement purposes and an indefeasible one upon the completion of the improvement.

Respectfully,

EMMET ALPHA."

Offer.

Mr. McCaleb: We offer, introduce and file in evidence the letter referred to by the witness.

A. (Witness continuing:) On May 22nd, 1920, I received a reply from the United States Attorney, signed by Mr. J. D. Dresner, now in Court, reading as follows:

New Orleans, Louisiana, May 22nd, 1920.

Emmet Alpha, Esq.,
Attorney at Law,
Franklin, La.

DEAR SIR:

For your information, I beg to say that I have this day received a letter from the Attorney General under date of May 18th, instructing that expropriation proceedings be immediately instituted.

I am writing you so that you may be informed.

Respectfully,

J. D. DRESNER,
Special Assistant to U. S. Attorney."

190 Offer.

Mr. McCaleb: We offer that letter in evidence.

The Court: What is the object of these documents?

Mr. Alpha: It is to rebut Major Dent to the effect that no other route could be secured. I am passing to that now, as a part of this conference.

The Court: You don't mean to say no other route, but this is the most logical and feasible?

Mr. Alpha: Well, my testimony I think will controvert that. Major Dent; while at Franklin, on the very last visit he made there, which was probably in May of this year, or maybe in April, went to the head of the Hanson Canal, at the public road bridge, and he

nd I and Mrs. Lawless discussed this proposition that in view of the act that the Hanson Company's present canal was cut within 24 eet of the north line, or the line of the 300 feet on the Franklin side, nd that the canal was only 40 feet wide, that the Company would ndeavor to secure to the Government a right of way 120 feet wide rom Mr. Foster, owning the land adjacent to the 300 feet strip, hich, when added to the residue of the 300 foot strip not occupied by he Hanson Canal, would hold a new or parallel canal upon which he Government might cut it. We found, however, at that time, ample room, ample territory belonging to the Hanson Company, of the 300 strip, unconsumed by the present Hanson Canal
191 upon which a new canal could have been cut. That was offered to Major Dent at the time, but, as I understand, some egulation or rule of his office, such an offer could not be accepted nless an additional strip corresponding to the width the Hanson Company had to take out for its own canal be added to that width in rder to constitute a 300 foot strip. We discussed in that conference he feasibility of cutting a parallel canal only ten feet from the present Hanson Canal, a tow path, as Colonel Dent called it, so hat the tow path might afterwards be cut out and widen the government canal to the full width of the Hanson Canal and tow path, after he Hanson Company finished using the canal. I believe that is a very much better right of way and very much preferable to the one they have adopted, in view of the fact that the cost of constructions now upon the Hanson Canal, are built with the canal's own narrowings, are really more narrow than the canal, one of the bridges, the railroad bridge, I believe, having been declared by Mr. Kempner to be only 26 feet wide; this railroad bridge is built on the 300 foot strip that the Hanson Company absolutely owns, and is therefore part of that strip. The Southern Pacific Railroad system, as successor in title to the Opelousas & Great Western Railroad Co., owns merely a servitude occupation of the right of way, a certified copy of deed——

Mr. Mooney: I don't understand that much of this evidence—of course I hate to object to the testimony of a brother attorney—but really a great deal of it is clearly irrelevant.

The Court: I think so too.

192 Mr. Mooney: Unless Mr. Alpha has some direct purpose in it, it seems to me it is all irrelevant; I object to it on that ground.

Mr. Alpha: We don't know, may it please the Court, whether the proceedings by the Government seek to condemn the railroad bridge or not, and I want to prove it belongs to the Hanson Company. We have never asked them for an interpretation of their pleadings and we don't know if it is included, or if it is not included; if it is included we have no use for those documents.

Mr. Mooney: Whom does the railroad bridge belong to?

Mr. Alpha: It belongs to the Hanson Company; I am testifying to that fact.

Mr. Mooney: All right; we will ask for the railroad bridge along with everything else.

The Court: Do you want the railroad bridge too?
Mr. Mooney: Yes, sir; we want to have it.

Cross-examination.

By Mr. Mooney:

Q. Mr. Alpha, I was a little surprised you should state what
193 occurred in our negotiations for the purpose of taking up amicably this matter, but it is a fact that up to February of this year, this condemnation suit wasn't thought of at all, isn't it?

A. I can't remember the date at which the Hanson Company contemplated a resistance, but it was about February 1st.

Q. Do you remember sending to my office a telegram?

Q. And writing to my office on the same date?

A. Yes, sir.

Q. And that was the first intimation that the Government had, so far as you know, that this resistance to these proceedings would be made, wasn't it?

A. Yes, sir.

Q. You were present last summer at a time when Major Dent conferred with Mrs. Lawless in regard to a condemnation suit?

A. Yes, sir.

Q. Do you remember that it was said that the action on the part of the Government in bringing this suit would not be considered an unfriendly act by Mrs. Lawless, or that in substance—I don't pretend to quote the exact words.

A. Where was that conference?

Q. At Garden City.

A. Why in that conference Mrs. Lawless referred to the necessity of widening, or the inconvenience of widening, but it may be that she did say she would not regard a condemnation suit in an unfriendly spirit,——

Q. Now is it not a fact——

A. —but it was in connection with that conference that I referred in my direct evidence to the fact that Mrs. Lawless took alarm at the answer of Major Dent to the effect that he had no authority
194 to authorize the widening or promise a widening, and I went to Washington on the strength of his declaration.

Q. When was it you went to Washington?

A. I can't recall, but it was some time previous; it was between the two conferences I had with you at New Orleans.

Q. Was it since February 20th of this year? Since the date that you sent me that telegram?

A. Yes; I believe—I can't recall, I won't be sure.

Q. Well, you really hadn't become alarmed then until after the date you sent that telegram and letter to me, disclosing your intention to fight the proceedings?

A. I referred to Mrs. Lawless' alarm, dating from the conference with Major Dent, when she then commenced to realize that there might be some construction to the widening process.

. Now that was last summer, Mr. Alpha, wasn't it, as near as you llect it?

. Yes, sir; that was.

. And I suppose that alarm continued to grow in Mrs. Lawless l February of this year after you sent your telegram to me, and became so great that you went to Washington in order to y her alarm and find out just what the facts were?

. That is a fair surmise.

. Now Mr. Alpha, I didn't expect to use this, and for the nent I have misplaced the originals, but these are copies—read telegram and letters—I will ask you if those are not correct copies he telegram and letter sent you?

Documents in question handed to witness. Witness examines e.)

A. Those are correct copies; yes, sir.

Q. Did you read the copy of my letter to you, Mr. Alpha?

. No, sir; you hadn't spoken about that.

. You have my original?

. Yes, sir; I have. (Produces document.)

Offer.

Mr. Mooney: We produce, offer and file in evidence, may it please Court, copies of the following documents which have been iden-ed by the witness as correct copies of the originals:

. Telegram from Mr. Alpha, addressed to United States Attorney, w Orleans, on February 20, 1920.

. Letter from Emmett Alpha, dated February 20th, 1920, ad-ssed to United States Attorney at New Orleans.

. Carbon of a letter written by the United States Attorney at New leans to Mr. Alpha at Franklin.

I would like to read these documents to the jury at this time. The telegram referred to, gentlemen of the jury, reads as follows:

"United States Attorney, New Orleans, Louisiana"—it is dated anklin, February 20, 1920—"Owing to circumstances related in r letter to you, the Albert Hanson Lumber Company withdraw nsent given to Colonel Dent to condemn its canal by consent judg-nt and will resist such proceedings if brought."

The letter referred to in said telegram, as stated by the wit-ness, is dated February 20th, 1920, addressed Honorable nry Mooney, New Orleans, La.

EAR MR. MOONEY:

Colonel Dent came to Garden City some four months ago to confer th Mrs. Lawless, President of the Albert Hanson Lumber Company

as to the possibility of acquiring title to what is called the Hanson Canal, connecting the Bayou Teche with Bayou Portage. My presumption is that there are writings in your possession or under your control that describe the whole situation, together with the Hanson Company's objection to a sale of the canal under the circumstances now existing, of which I informed Colonel Dent in that conference.

He then said that the policy of the department was never to bring a condemnation suit except as a consent proceeding; and to facilitate the transfer of the canal by the Hanson Company to the Government, I consented, with Mrs. Lawless' ratification, that the condemnation suit be brought, saying that no resistance whatever would be made to the condemnation, and the company would limit the contest before the Court to the true owner or owners of the purchase price, which I afterwards put in writing to him.

Since that time it has come to my knowledge that a subordinate in your department has been active in the interest of persons who oppose the purchase by the company of additional canal strips for economically logging its mill—and has made promises to those persons to proceed immediately with the filing of condemnation proceedings, which assistance is being used to materially injure the company in these other canal matters.

197 The substance of the correspondence or conferences had with the person under your authority has not been given to the company, which is the most deeply interested party; and this letter is written to inform you that unless the vote of the inhabitants of a township in this parish is favorable to the sale of a tract of land on March 30, 1920, the Hanson Canal cannot be acquired by the Government at any price, until all the resistance within the power of the company to offer shall first have been exhausted.

Respectfully,

EMMET ALPHA."

My reply being February 25, 1920:

"Emmet Alpha, Esq.,
Attorney at Law,
Franklin, La.

DEAR SIR:

Upon my return to the office, I found your letter of February 20, and your telegram of the same date, referring to the Hanson Canal matter.

I must confess that I was greatly surprised at the tenor of these communications, as I had been under the impression that the settlement of the right of way of the canal property was a matter of public interest, and so viewed by you and your client as well as your neighbors. I was further surprised at the charge contained in the letter addressed to the District Attorney, indicated by the following language:

'Since that time, it has come to my knowledge that a subordinate in your department has been active in the interest of persons who op-

pose the purchase by the company of additional canal strips
98 for economically logging its mill—and has made promises to
those persons to proceed immediately with the filing of con-
emnation proceedings which assistance is being used to materially
njure the company and these other canal matters.'

I must, of course, assume that this reference is to me, and I wish
o assure you that never at any time have I done any act except in
he interest of the government, and never was I actuated by any de-
ire to act in the interest of any individual, or, to create any friction.
do not know, of course, what facts your intimation may cover, and
an only assume that you refer to the fact that Congressman Martin
f your District called at this office in regard to this matter, which is
f course, of interest to the people of his district, and that he urged
hat this office do everything within its power to bring about a
peedy settlement of the whole matter. As this had been the attitude
f the Engineer's office for some time past, and as we have endeavored
rom time to time to conclude the whole thing, shortly after the
Congressman's visit here, I wired the Attorney General as follows:

'Department's letter October twenty-second CSL one four two four
lash two five to United States Attorney Shreveport re Hanson Canal
eferred to this office. Stop. Congressman Martin and citizens of
icinity of canal urge prompt attention. Stop. Instructions in
Department's letter require title to be examined again. Stop. Ex-
amination already made by Robert A. Hunter, former Assistant
United States Attorney Shreveport with concurrence of former
United States Attorney George Whitfield Jack and their reports of
April twenty-fourth nineteen fourteen and November twenty-first
nineteen fourteen indicate title to be good provided certain
199 defects are cured. Stop. Congressman Martin and local En-
gineer's office say all defects have been cured and only in-
terests to be divested are those of Hanson Lumber Company and
Miss Georgia Bentz, a posthumous child of a former owner. Stop.
Re-examination of title would require undivided labor of one man
for at least two weeks and under present conditions would seriously
interfere with current work. Stop. Does Department desire entire
title to be examined again or will it be satisfactory under above cir-
cumstances for this office to only verify whether defects pointed out
by Hunter and Jack have been cured.

DRESNER,
Special Assistant to U. S. Atty.'

I sent a copy of this telegram to the Engineer's office. Congress-
man Martin and to Mr. Peterman of Frankin, La., and would gladly
have furnished you with a copy of the same at that time just as I am
now doing. Now it is possible for your client or for yourself to take
any exception to any of these acts is beyond my comprehension. I
am writing you fully in regard to the matter because I feel that
your action may have been prompted by some misapprehension
of the real facts, and I am hopeful that now you are in possession
of the true state of facts, you will recall your letter and telegram

and allow the matter to proceed as originally agreed upon. It was certainly not the intention of myself, or anyone in the District Attorney's office, to act on behalf of any set of persons to the detriment of any other set of persons in connection with this canal property. The Government is urging us to go ahead with the
200 matter, and your previous attitude of co-operation has been greatly appreciated.

Respectfully,

DRESNER.

Special Assistant to the U. S. Atty."

Q. Now Mr. Alpha, following the writing of your telegram and letter, and Mr. Dresner's reply thereto, which I have just read, was this special election held?

A. It was.

Q. Were the Hanson interests successful or unsuccessful?

A. They were defeated.

Q. Now, ten the concluding paragraph of your letter of February 20, which served notice on the Government that unless the Hansan Canal interests were successful in that special election, you would resist to the full extent of the company's power, has been the policy adopted since that election, has it not?

A. That has been the policy, but I don't say that it has been adopted because of that fact.

Q. Well, wasn't that the reason ascribed by you in this letter I have just read?

A. That is the only reason my letter gave.

Q. And, as a matter of fact, things turned out just that way, that the special election was held and the Hanson interests were defeated; that is true, is it not?

A. Yes.

Q. And did you go to Washington before or after the special election?

A. I have no way of identifying the time of my departure for Washington, but I have already said it was between the two conferences I had with you at New Orleans, not over ten days apart. You may help me on that.

201 Q. Well, from your letter of February 20th, in which you say that your subsequent course in the matter would depend upon the outcome of that special election, I take it that you hadn't fully made up your mind to resist the suit until the result of the election was ascertained; is that true or not?

A. Well, that is the logical course you are pursuing, that is about the way I would reason it out, but I can't remember it as an independent fact.

Q. Now up to that time there hadn't been any serious discussion about all these matters about which the evidence has been offered during this trial, about the length of tows, the time it takes to tow logs through the canal, the tide water and things, that had not been discussed at any time, had it?

A. No, sir.

Q. And it was only after that special election went against the Hanson interests, and you concluded to resist to the limit of your powers that the defense was made which you are now making?

A. What do you mean by defense?

Q. Well, I mean that these matters were brought out—the original complaint as indicated by your letter—and I think it is testified to by you—was that the Government, in order to divest the possible interest of this posthumous child, Miss Bentz, would have to bring a condemnation suit; that was the original position?

A. Yes, sir.

Q. That was practically acquiesced in by both sides, wasn't it?

A. Yes, sir.

Q. And up to the result of this election, there was no intention to make any fight, and, as your letter indicated, leave the
202 question to be decided who should receive the proceeds?

A. Yes, sir.

Q. Now these other matters of defense, I say, were not discussed even until the election was held?

A. They were discussed only after that election, to the best of my recollection.

Q. Now Mr. Alpha let me ask you this point blank, after your conference with the District Attorney and the exhibition to you of the files of the office in regard to this matter, you don't believe that the Government has played any favorites, do you?

A. Yes, sir.

Q. How?

A. I can't be convinced to the contrary, not by anything in your office. I am glad you asked me that.

Q. And I am very glad to have you come out frankly, because I want to clear it up here and now. Now what action, or what word on behalf of the Government or of any Government official do you base that statement on?

A. Why it would be almost unfair to the jury for me to make the declaration from the witness stand.

Q. I think the jury ought to know it, I think it is a right serious matter. The Government is bringing the suit in the interest of the general public, and I am not conscious my office has played any favorites; you say you believe that it has. Now, on what do you base that belief? The jury may or may not agree with you.

A. I base it particularly on one incident, but not exclusively, just mainly on this incident that the Hanson Canal project had been allowed to sleep for two or three years and the Government was spending that two or three years in demanding the doing of
203 practically impossible things, such as getting affidavits by the children and grandchildren of the former owners of the tract of land upon which the 300 foot strip is situated, to the effect that their grandfathers and great grandfathers had paid mortgages that rested upon that property previous to the war between the States, that was utterly impossible of accomplishment, together with the fact that the Morse family physically occupied the

Morse tract previous to the Civil War, which was accompanied b
a long inquiry into the family relations and other acquaintance
of the Morse people, and another requirement that was based upo
affidavits that I can't recall, but I do recall the incident of havin
got the affidavits. Those documents were all gathered up or pr
pared and sent to the Hanson Company, and they put them awa
in the safe, and they slept in that office for a couple of years, an
the Company wrote the Government saying that it couldn't possibl
comply with the other request regarding the ancient mortgages o
other owners of the Morse tract and to keep the documents there i
the meantime. Finally, the Government got very solicitous abo
purchasing the Hanson Canal, and Mr. Lawless, in a conferen
with Mr. Lipsey, who began these conferences at Garden City, wh
came really before Major Dent had come, though Major Dent i
tended to come and missed the train here, as Mr. Lipsey says, Mr
Lawless says in that conference, "What is back of all of these ob
jections? It is mysterious to me, that they all——."

The Court: Wait a minute. That is not only irrelevant, but
is——

The Witness: Why was she declaring that in my presence.

204 The Court: The only thing before the jury is the matt
of damages.

Mr. Mooney: Both these documents which have been offered,
submit them—your Honor is right, but the record will be made u
and things that your Honor may understand perfectly, and t
jury sitting here may understand perfectly, will look very differe
in cold type. Now those documents were offered in evidence to t
and straighten this impression out—I don't really believe that M
Alpha still thought so, but I think in justice to the reflections whi
were made on Mr. Dresner, that the record ought to be clear
regard to it.

Mr. M'Caleb: Well, this may be all legitimate, but it has abs
lutely nothing to do with the case, although I didn't object becau
it was cross-examination.

The Court: The gentlemen are entirely too courteous in not o
jection, because you know all about this case, and I have to sit he
about thirty minutes before I can determine of my own moti
that it is entirely irrelevant.

Mr. Mooney: Let me say just a word and then I am through.
think this is relevant to this trial to understand the defense that
being made, and it is certainly not understandable to them to he
a lot of evidence about Mr. Alpha being perfectly willing to transf
this property for $65,000, to hear the reasons for which th
205 intended to do it, and then not understand why he didn
Now then, when we undertook to do it, we met with so
very serious difficulties, and I want to show that up to the 20th
February of this year that that was never contemplated at all, a
that all of that is a direct result of a local election occurring at th
time, because the record shows that upon the result of that electi
depended the course to be taken by this company.

The Court: Well, you have shown that, I think.
Mr. M'Caleb: He has shown something else, if your Honor please, in other words, as I understand it——
The Court: How many more witnesses have we in this case?
Mr. Alpha: Well, I think we will close with my testimony.
The Court: How many have you Mr. Mooney?
Mr. Mooney: We have three.
The Court: How long will you want to stay here; till 5:00 o'clock? I am willing to stay till 6:00
Mr. Mooney We will close easily in that time.
206 The Court: And then the case will have to be argued. That will be a cruel and unusual punishment for the jury. I was trying to save time.

Offer.

Mr. M'Caleb: We want to offer in evidence, in connection with the testimony of Mr. Kempner the map referred to by him in his testimony, the map or diagram of the Hanson Canal, also the letter and proposed regulations of the Engineering Department referred to in the testimony of Mr. Kempner.

Offer.

Mr. Mooney: In connection with the testimony of W. B. Smith, we offer, introduce and file in evidence the maps which were identified by him as having been drawn and prepared by him.

Rebuttal.

EDDIE BOUDREAUX, sworn and examined as a witness on behalf of the United States, testified as follows:

Direct examination.

By Mr. Mooney:

Q. What is your name?
A. Eddie Boudreaux.
Q. Mr. Boudreaux, what is you business?
A. Logging operations.
Q. What do you do in the logging business; what particular part of the logging business?
A. Well, I do the superintending of it.
Q. Where are you employed?
207 A. In St. Mary Parish.
Q. Are you logging now for any particular concern?
A. Yes, sir.
Q. What?
A. Do you mean for what firm; Pharr Lumber Co.
Q. Where is that mill located?
A. In Franklin.

Q. Where do they get their timber from?
A. Well, we are now getting our timber in Belle River.
Q. How do you get it to the mill?
A. We get it to the mill at present with a steamboat.
Q. Do you use the canal?
A. Well, we did up until around February or March.
Q. What canal did you use?
A. We used a canal that was dug by three concerns; going out into Lake Natchez.
Q. How large a canal is that?
A. That canal is between 35 and 40 feet.
Q. In width?
A. Yes, sir.
Q. And how long is it?
A. That canal is about six miles long.
Q. Are there any locks to it?
A. No, sir; no locks.
Q. Just a straight canal?
A. Yes; just a straight canal.
Q. Not straight, but only a canal without locks?
A. Just a few little crooks in it.
Q. What are the three concerns that do their logging through that canal?
A. A. Wilbert & Sons, from Plaquemine, and Brownell-Drews, from Morgan City.
Q. What is the capacity of the mill you work for?
208 A. Well, it is between fifty and sixty thousand feet.
Q. Do you know the capacity of the other mills?
A. Yes, sir; capacity about fifty thousand.
Q. Are they running all the time?
A. Yes, sir; running regularly.
Q. All three mills get their supply of logs through the same canal?
A. At that time; yes, sir.
Q. Did they have any trouble getting supplied?
A. Very little; very little trouble we ever had.
Q. How does the size of that canal compare with the size of the Hanson Canal?
A. Well, by general appearance, it appears about the same size, in width.
Q. What tows did you use there?
A. Sized boat?
Q. What tows; no, not what sized boats; what tows?
A. Oh, whatever we pulled that day, we came through with it; that would be about 60,000 feet a day.
Q. How did you fix your tow; what was the width of it and the length of it?
A. Well, the length was about six or seven hundred feet and the width was between eighteen and twenty feet wide. We left room enough to allow for navigation to go both ways.
Q. So that the tows or boats could pass going in both directions?

A. Yes, sir.
Q. On a 35 foot canal?
A. Yes, sir.
Q. Did you raft your logs or how?
A. We put booms around them and spliced them across, and logged them with chain dogs.
Q. Why?
A. Well, that was in order to secure the timber, to keep any of it from getting away and breaking up and giving trouble in the canals, so as not to foul the canal and stop navigation from going through.
Q. Well, did you have much trouble fouling the canal?
A. No, sir; our timber was put up in shape, with dogs, so as not to interfere with the towing part of it.
Q. When a tow breaks up, it is largely due to faulty construction of the tow, is it?
A. A good many times, yes, sir.
Q. With a little pains, they can be so constructed that they won't break up?
A. Yes, sir.
Q. Except under extreme circumstances?
A. Yes, sir.
Q. And you had very little trouble in this canal?
A. Very little trouble.
Q. And you brought timber for three mills through there?
A. Yes, sir.
Q. And the boats could pass both ways?
A. Yes, sir; we also handled our fuel boats.
Q. Now how long did you say that canal was?
A. That canal; six miles.
Q. And about the same size as the Hanson Canal?
A. Yes; about the same size.
Q. Well, who owned the other mills that you spoke of?
A. Brownell & Drewes the one at Morgan City, and Fred Wilbert & Son the one at Plaquemine.
Q. Did they receive their timber through this canal?
A. Yes, sir; they received their timber through this canal.
Q. It was towed through there the same way you towed yours?
A. Yes, sir; all going in the same direction.
Q. Now what sized boat did you use?
A. We used in there a sixteen horsepower Frisby engine.
Q. Do you know the Ivanhoe, the boat that belongs to the Hanson Lumber Co.?
A. Well, I don't know her, no, sir; I only heard talk of her.
Q. Could you have towed more than you did if it had been required, or was that the limit?
A. No; we could handle more timber, but that was up to the capacity of our logging operations. At times we didn't tow timber for two or three days, and tow it through, I should say, in about two or three days, hold the timber up for some particular reason, didn't

have room enough in the lower end, where we had stowed our tim
ber, and things of that kind.

Cross-examination:

By Mr. Alpha:

Q. How do you know the capacity of the other two mills?
A. Well, they have the same rig and the same machinery that ou
mills has at Franklin, single band and resaw.
Q. Did you ever work for either Brownell & Drewes or Wilbert?
A. No, sir; never worked for them.
Q. And at that time you say you were working for the Coyle Lum
ber Company?
A. Yes, sir.
211 Q. How do you know that all three of those mills were e
clusively logged through that canal?
A. Well, at this present time, their logging operations is about th
same as ours, and they are supposed to log about the same amount
timber.
Q. Well, how did you know that they did log the same amou
that you did?
A. Well, that is something that I didn't investigate, their boo
or anything of that kind, but they have the amount of timber th
I judge that they pull about the same amount that we were pullin
at that time.
Q. You pulled on still water?
A. Well, we have very slack tide, I should say; sometimes we h
the tides in our favor, and coming to about a dead still.
Q. You had no locks and no head waters to fight?
A. No, sir.
Q. You had no drainage water going through the canal, h
you?
A. Well, we did, but then it was going in our favor.
Q. All the drainage was in your favor then, instead of again
you?
A. Yes, sir.
Q. And you put your timber in the river and it just dropped dow
to Morgan City, didn't it?
A. No, sir.
Q. Did you have to tow it?
A. Yes; at a certain time of the year we got slack tide; not muc
a head at no time.
Q. What two bodies of water did your canal connect?
A. It connects Grand River and Lake Natchez.
Q. And you had favorable water movement most of the tim
didn't you?
A. Yes, sir; at particular places.
212 Q. You could have towed day or night in that can
couldn't you?
A. Yes, sir; we could have towed day or night.

Q. You say the Coyle Lumber Co. has what capacity?
A. About 60,000 feet.
Q. Were all three of the mills logging in the same tract, or different tracts?
A. No, no; we had this main canal and then each company branched off and went into its own land.
Q. Which came out closest to the mouth of the canal?
A. The Brownell-Drewes did.
Q. How far from the mouth?
A. About four miles.
Q. The other two came out further?
A. Yes, sir; the Wilbert and the Coyle Lumber Co. came out into the same canal; the Wilbert people, they were above us and we were just below, coming out through the same canal.
Q. And all still water, all water in your favor?
A. It wasn't all in our favor, no, sir, we would catch it slack.
Q. Well, whenever the water moved, didn't it move in your favor?
A. Yes, sir; whenever it moved, it moved in our favor.
Q. You didn't need any boats at all, you could just let it float down the canal, couldn't you?
A. No, you couldn't do that, because we had a lake to go across, this canal went through Lake Natchez—Lake Natchez didn't have over two feet of water and we had to dig it out—and then we had wind to contend with.
Q. I thought you said the canal extended from Belle River to Lake Natchez?
A. Yes, sir, but this is the lower end of Lake Natchez, we went through Lake Natchez, down to the lower end of it.
213 Q. The water was never rapid enough to carry your timber without a boat?
A. No, sir, not through the lake.
Q. But through every other part than the lake?
A. Well, I would say about two miles we had no lake to contend with. Now we have done other logging that I could properly testify to.

By Mr. Mooney:

Q. That was on a canal where you had tide water to contend with?
A. Yes, sir; connecting from Bayou Lafourche to Lake Verret.
Q. How long was that canal?
A. Eight miles long.
Q. And how wide?
A. About forty feet wide.
Q. And is there any tidewater there?
A. Yes, sir.
Q. Now how does that tide run?
A. That tide? Four months in the year it runs against you, hard against the boat, against the towing.
Q. What towing did you do over there?
A. We towed only for the (name inaudible) company and the

Coyle Lumber Company. I did the scaling and looked after the towing through this canal, superintending.

Q. Now what would be a tow on that canal when the tide was running against you?

A. Oh, I would say about seven or eight hundred feet.

Q. You mean it would be that long?

A. Yes, sir.

Q. And how wide?

A. About twenty feet.

Q. Were there other people using that canal?

214 A. Yes, sir; it is navigable.

Q. Is it open to the general public?

A. Yes, sir.

Q. When it is navigable; that is what I mean?

A. Yes, sir.

Q. And how much—what was the capacity of the mill it supplied?

A. I had a logging operation into the Lake right close to this canal, into Lake Verret, and Mr. Ben Lawers was doing logging at Raceland, pulled; I judge about 65,000 or 70,000 feet went through the canal a day in that lake, I was trying to log both mills.

Q. Do you know the capacity of those mills?

A. Yes, about 45,000 feet.

Q. How wide did you say the canal was?

A. About forty feet wide.

Q. And how long.

A. Eight miles long.

Q. And you had tidewater in that canal?

A. Yes, sir.

Q. And you supplied two mills?

A. Not through this canal, no, sir.

Q. What did you supply through the canal?

A. We supplied one logging operation; the other operation didn't come through the canal.

Q. How many logs came through the canal?

A. About sixty or seventy thousand feet a day, between sixty-five and seventy thousand.

Q. And that was navigable down to June, you say?

A. Yes, sir.

By Mr. Alpha:

Q. In which direction did the tide run, into Bayou La Fourche or out of it?

A. Into it.

215 Q. From what?

A. Lake Verret.

Q. And which way were you going?

A. We were going against it.

Q. Against it?

A. Against the tide; yes sir.

Q. What was the speed of that current?

. At times, I would say, about two miles an hour.
. How long has that canal been there?
. Well, I judge probably ten or twelve years; it was there several s before we logged there.
. And for four months in the year the water pours through in direction?
. Yes, sir.
. How wide was it ten years ago?
. Well, it was the same width, been the same width, the original al, about ten years.
. And four months constant water at two miles an hour has not ened it any?
. No, sir; not but very little, that is only four months in the r.
. How many boats did you use pulling these 800 feet?
. We used one boat, about 45 horse power, Fairbanks & Morse.
. How wide was your boom?
. It was about 18 to 20 feet wide.
. And about 800 feet long?
. About that, yes sir.
. How many feet did it contain?
. It contained between sixty and seventy thousand feet.
. And you didn't have any locks?
A. No, sir; no locks.
Q. How much of the canal would you navigate?
A. All of it.
. Would you bring timber out of Bayou La Fourche?
. We would bring it out of Bayou La Fourche through —— nal into Lake Verret.
. There were no obstructions of any kind in the canal, were ere?
. No, sir.
. Was there any other person towing timber through that canal o?
. No, sir; they were the only people.
. You had a wide open canal, no timber in it?
. No timber, but considerable traffic.
. What kind of traffic?
. Well, I should say, boats of good size, and small barges.
. What did Ben Lawers have to do with that work?
. He was on the other end; he pulled the timber out of the ods.
. And what did you do.
. I superintended the towing of this timber and did the scaling the other end, and I had this logging operation also for the same mpany.
. On what end?
. On the end that it comes out at Cheney's canal into the lake.
. You were on the lake end?
. Yes, sir.
. Did that carry you through the canal?

A. I went through the canal.
Q. How often?
A. I went through the canal two or three times a week.
Q. For what?
217 A. Well, I went through occasionally to see there was not any trouble with the traffic, to see that the timber was handled properly.
Q. And you would scale it at the lake?
A. I dont the scaling at the lake; that only required two or three hours a day.
Q. Who pulled it, who steered the boat?
A. Oscar Clarence steered the boat.
Q. Did you ever pull timber with the boat?
A. I have, here, in this canal, but I am speaking of in particular where these three firms were towing; whenever one of my towing men dropped out, why, I replaced him.

A. T. PETERMAN, sworn and examined as as witness on behalf of the United States, testified as follows:

Direct examination.

By Mr. Mooney:

Q. What is your name?
A. A. T. Peterman.
Q. You live in St. Mary Parish?
A. Yes, sir.
Q. And have lived there a great many years?
A. All my life.
Q. I don't know whether I should say a great many years, but for some years, what has been, and what is your business at the present time?
A. I am interested in the lumber business, highway building and so forth.
Q. You are a practical lumberman, aren't you?
A. I should judge so, yes.
218 Q. And familiar with the Hanson Canal property?
A. I am, to some extent, yes, sir.
Q. Have you been through the Hanson Canal?
A. Why not lately; I judge along about 1911 or 1910 I went through it.
Q. Well, the canal has not changed much for the better since 1911 or /12, has it?
A. Not that I know of.
Q. Mr. Peterman, do you know whether or not—or let me ask the question this way—do you know whether the entire use of that canal is required to serve the Hanson Lumber Company's mills with lumber—I mean, whether the canal would have to be used exclusively for that purpose, or whether it could be devoted to public use also?
A. Why, I am sure it could be devoted to public use also.

Q. Have you pulled timber, as they talk about?
A. Yes, sir.
Q. Through these canals?
A. Not through that canal but through like canals.
Q. Through like canals? Have you ever had to pull timber through a canal in which the tidewater was against you?
A. Yes, sir.
Q. When was that and where?
A. Why I guess about 1910, in the Cancienne Canal.
Q. What sort of a canal is that?
A. About 40 feet wide, 40 to 50 feet; it was 50 feet originally.
Q. How long?
A. Eight miles, seven or eight miles.
Q. Who built that canal, who dug it?
A. Why, the Drainage Commission in the Parish of Assumption, I think.
219 Q. It that a public canal?
A. They took it over anyway from the Cancienne Company.
Q. Who was it used by at the time that you pulled timber through it?
A. Why it was used by the Kyle Lumber Company, and the Red Cypress Company, to pull their timber through, and then those fishing and shell boats and so on.
Q. Used the canal at the same time?
A. Yes, sir.
Q. How much tide water did they have in that canal?
A. I don't know. During the high water of the spring of one year there it was considerably higher than it was in Bayou La Fourche, I presume a couple of feet higher, but that only remained about five or six months, four or five months.
Q. Four or five months in the year. Now in what respect did that differ from the general conditions of the Hanson Canal?
A. High water?
Q. In what respect did that differ from the Hanson Canal in regard to tide water?
A. In this respect, if the Hanson Canal was properly equipped with locks, that is, if the locks were good locks, and didn't leak in some manner, it would be a better canal to log in, to handle timber in than the Cancienne Canal, because if you had a two or three foot higher level of water in Bayou Teche than you had out in the swamp, if the locks didn't leak, you certainly wouldn't have any tide in that canal, only in so far as the water that you had accumulated in between the gates, when you opened them to the outside of them.
Q. Have you seen the locks of the Hanson Canal lately?
220 A. Why I pass there frequently.
Q. Do you know whether or not they do leak?
A. I have not examined them closely; of course I have heard, but I don't know.
Q. The question of tide, of course, is influenced by the fact that

the water in the Bayou is higher than the water at the other end of the canal; is that the idea?

A. Yes, at this season of the year; that doesn't obtain altogether.

Q. And if any quantity of that water gets through the locks, it creates a current towards the lower end of the canal?

A. Yes, sir.

Q. And that is what is generally termed tide water?

A. Yes, sir.

Q. And the tighter the locks are, the less current there is for the reason I have given?

A. Yes, sir.

Q. How long did you say this canal was?

A. Seven or eight miles.

Q. And you say forty or fifty feet wide?

A. Yes.

Q. What is the width of the Hanson Canal, do you know?

A. I am not sure; I think 40 feet.

Q. What was the capacity of the saw mill that did its logging through this other canal that you speak of?

A. Last year our cut was 12,800,000 feet. Now in 1915, I remember—I don't know just what the other years were, but in 1915, we cut something like 14,000,000 feet.

Q. What is the daily cut?

A. Well, that depends on the timber, the size of the timber. The timber we are cutting now, tupelo gum, the cut is mighty

221 light, but I presume now we would cut forty to fifty thousand.

Q. Now if you were cutting cypress, what would be the capacity of the mill.

A. Not as much as sixty thousand.

Q. Now, do you get all your gum timber through this canal that you speak of?

A. We did at that time, but not recently; we logged our mill for several years in the low lying ground just near the water in Lake Natchez, where we have six or seven miles of canal.

Q. Now this year you are speaking about, you used this canal, and a part of last year, I believe, or last year, you did use it?

A. Yes, sir.

Q. Now did you say the line, the width of it, had been cut down to 40 feet?

A. No, no; this was back in 1910, the canal I speak of.

Q. Originally you confused the two canals—that is what I was afraid you were doing. Logs came through that canal back in 1910—that is the one that you described by what name?

A. The Cancienne Canal.

Q. That is the one that was taken over by the Drainage District that you referred to; is that right?

A. Yes, sir; it was under their control; they handled it.

Q. Now did you do logging through that canal?

A. Yes, sir.

Q. Were there any other mills doing logging through that canal at that time?

A. I don't think so, at that time.

222 Q. And how much did you pull through the canal daily?
A. Well, I don't know, but at times may be 70,000 feet, make the tow a couple of times a day.
Q. What was the width of that canal, the Cancienne Canal?
A. I don't say that is the capacity, Mr. Mooney; they could probably have brought more through.
Q. That is all you pulled through. Now on the days that you pulled that timber through, was the canal open to the general public?
A. Yes, sir.
Q. Did boats also pass through?
A. Small boats, launches. Our booms were very narrow, we had to make them narrow enough.
Q. But it didn't interfere with the public use of the canal, except to the extent that you had to make your booms a little narrower. Is that the canal that you say you had tide water in, the Cancienne Canal?
A. Yes, sir.
Q. Now this second canal that you speak of, what canal is that?
A. Up in Lake Natchez?
Q. Up in Lake Natchez, yes, and the canal was just part of the lake?
A. It was dredged out, dredged out on each side.
Q. So that is the canal?
A. Yes, sir.
Q. How wide is that canal?
A. Oh, I guess forty feet.
Q. Is there any tidewater in that canal?
A. Why there is a current in there, always the same way as the timber, it is favorable to us.
Q. What is the strength of speed of that current?
223 A. Well, really I don't know now.
Q. How much timber did you pull through that canal?
A. Why we logged our mill with two pull boats.
Q. Can those boats pass each other in the canal?
A. Oh they—you don't mean the pull boats, you mean these small tow boats?
Q. Yes.
A. Yes, sir.
Q. Is that canal used by the public or just by the mill?
A. Used by the public, that is until up into Choctaw and Grand River.
Q. What sort of traffic?
A. As a matter of fact, there are three concerns, A. Wilbert's Sons, and Brownell & Drewes and the Kyle Lumber Company, up until this high water, has been operating through this same channel.
Q. Through the same channel?
A. Now mind you, I don't mean to say they have been logging all through the mills, but they were operating pull boats at the same time. Outside of ours, the Kyle Lumber Co., these other concerns had other sources of supply.

Q. Then as an experienced saw mill logging man, you believe that the Hanson Canal, if taken over by the Government, and efficiently managed, with proper regulations, would serve the Hanson Lumber Company with its necessary logs, and at the same time serve the public?

A. I do, yes, sir.

224 Cross-examination.

By Mr. Alpha:

Q. Mr. Peterman, your company owns timber on the Hanson Canal, doesn't it?

A. I should judge it would be, it must be, fully a mile or a mile and a half from the canal.

Q. But it is available for passage through the canal?

A. Yes, sir.

Q. And you expect it to pass through it some time, or hope to?

A. Yes, sir.

Q. Your mill has the right to pass it through there, that is, to take it off the ground, and that right expired in about four years, does it not?

A. I don't remember exactly. That is not worrying us.

Q. Why, in your opinion, is it that the Hanson Canal cut such a wide canal, if it and the whole world might use it at the same time?

A. How is that?

Q. Why did the Hanson Company happen to cut such a very wide canal, forty feet, if it and the whole world outside might use it at the same time; wouldn't a twenty foot canal have done?

A. I don't think so, no, not for practical purposes. We have some canals as narrow as thirty feet, with pockets to drop the booms in.

Q. Your footage is about how much of the track that you expected to bring through the canal?

A. Really I don't know; there is quite a controversy as to whose estimate was right on that.

Q. Is it at least three millions?

A. One man said three millions, and another said about six, I believe, there was quite a controversy over it.

225 Q. Now, the canal is open to public use, and you are limited to 12,000 feet a tow, and the Hanson Company is behind you with another tow, are you not an obstruction to its tow if its boat is the fastest?

A. Yes, if its boats is the fastest, yes, just that difference.

Q. Now if you should happen to break down, your boat break down or your timber break down, could it pass you if you both have bomed your timber to the maximum of twenty-five feet?

A. No, sir.

Q. Your boats do break down, don't they?

A. Yes, sir.

Q. And your tows break down?

A. Yes, sir. Now if you were to reverse that question, that condition, for instance if the Hanson Lumber Co. was in front and we broke down, we would get down and help them out, in other words, we wouldn't lose any time.

Q. Well, but you would lose time while you were actually making the repairs?

A. Yes.

Q. Are not the locks in the Hanson Canal a great obstruction to its use as compared to the open canals you have testified about?

A. The trouble of opening and closing them, yes, except at this time, as I stated a while ago, a lock that doesn't leak, a good substantial lock, would be an advantage during the spring and during the high water in Bayou Teche, because it is bound to be a dead water in the canal if those locks are closed, and if a lock was closed tight and you opened up the outer one it doesn't go any further than the inner lock.

Q. Well, but they have to lock timber through, and at this time of the year you have about two feet of water head, haven't you?

226 A. Yes; you come in there with timber, your outer lock is closed, isn't it—it ought to be, ought is not—next to the Teche. Well, there ain't anything to go up against but the lock, so if there is any water coming out of the Teche, it is closed. You take your tow in, close the other and open the one on the Teche; the timber just rises, it don't go back, you are not towing it then.

Q. But don't you have to wait until the lock fills, and close the west gate and open the sluices of the east gate?

A. Oh I presume so, yes.

Q. And you are delayed until the lock moat fills?

A. Yes.

Q. Before you can open the east gate?

A. Yes.

Q. And if you were in a straight canal, unencumbered with locks, you go through——

A. Go straight on through.

Q. Now the canal that the three mills used at the same time, the motion of the water was in the same direction that the timber was going?

A. Our boat and Brownell & Drewes. I happen to think now that Wilbert's timber went up against a stiff current from Choctaw into Grand River.

Q. Then that timber didn't even come through the same part of the canal that yours and Wilbert's came through?

A. It did, until you got to a certain point, the Choctaw.

Q. But your timber and Wilbert's came with the motion?

A. Our timber and Brownell's.

Q. Your timber and Brownell's came with the water?

A. Yes, sir.

227 Q. And you say that was a rather violent motion of the water?

A. No.

Q. How fast?

A. Oh, I guess, in Choctaw right now, there must be two and a half miles an hour current. I don't know, of course, I am just guessing.

Q. But you could surely tow all day and all night when the motion is in your favor?

A. Yes. We make, I think, we make about two trips a day down, with a sixteen horse power boat—I believe she is sixteen.

At this point the trial of the case was continued till the following morning, at 10.00 o'clock a. m.

July 21, 1920.

All parties being present, the trial of the case was this day resumed.

WILLIAM BOREL, sworn and examined as a witness on behalf of the United States, testified as follows:

Direct examination.

By Mr. Mooney:

Q. What is your name?

A. William Borel.

Q. Where do you live?

A. At South Franklin.

Q. I am going to ask you to speak a little above your ordinary voice, and distinctly, so the jury can hear everything you have to say. You live in South Franklin?

228 A. Yes, sir.

Q. What is your occupation?

A. Laborer.

Q. What sort of labor are you employed to do?

A. Boat man.

Q. Did you ever work on tow boats or the logging business of the Hanson Lumber Co.?

A. Yes, sir.

Q. When were you employed there?

A. I couldn't tell you exactly; I have been working there before I went in the army and after I came out.

Q. How long did you work there after you came out of the army?

A. Until November.

Q. Were you discharged by the Hanson Lumber Co?

A. No, sir; I quit.

Q. You are not working for them now?

A. No, sir.

Q. What work did you do after you came off from the army?

A. I went right on the boat and towed timber from Ivanhoe to Portage, with the Garden City.

Q. Where is the Garden City now?

A. She is burned up.

Q. What sort of a boat was the Garden City?
A. She was a small boat.
Q. When you worked on the Garden City, where did you stay, did you live in South Franklin?
A. Yes, sir, but we used to stay out there all the week, from Ivanhoe to Portage, we used to stay out there all the week, coming in on the Garden City; we stayed on the boat, we camped right on the side of the boat.
Q. What work would you do with the Garden City?
229 A. We just took the timber from Ivanhoe and brought it to Portage.
Q. Where was the Ivanhoe working?
A. It was not built at that time.
Q. I am a little confused; you are not talking about the Ivanhoe?
A. No, sir.
Q. You are talking about the post office?
A. Yes, sir.
Q. Where is that?
A. That is back of Cypremort.
Q. Would you come in the Hanson Canal when you were working on the Garden City?
A. Yes, sir; we would come in there every Saturday night.
Q. The rest of the time you were——
A. Going from Ivanhoe to Portage.
Q. Bringing the logs in?
A. Yes, sir.
Q. Did you ever tow any of the logs through the canal?
A. I have done it, yes, sir.
Q. In what boat?
A. On the Roxine now; she used to be the Dew Drop.
Q. When you worked on that boat, what did the boat do?
A. She used to take the timber from Portage to Garden City.
Q. Straight to Garden City?
A. Yes, sir. We used to take the tow from Portage where we could bring it up to the lateral and the cut-off and come to Garden City.
Q. You speak of the lateral; you mean the Bayou Sale?
A. Yes, sir.
230 Q. How much of the tow would the boat bring up to the lateral?
A. She would take as much as fourteen or fifteen booms, with a fair tide.
Q. Was that the little or the big boat?
A. That was the Roxine.
Q. Then you would get your tow and get how many booms up to the locks?
A. Sometimes six, sometimes eight as far as the lock.
Q. How many booms came through the lock at a time?
A. Four booms.
Q. How long did it take to get from Franklin to Portage through the canal—the canal is a little over four miles long?

A. You mean light?
Q. Yes, just the boat?
A. About an hour.
Q. How long does it take you to bring a tow, under ordinary co
ditions, from Portage up above the Bayou Sale Lateral.
A. How many booms?
Q. Say take a tow of twelve booms?
A. That would take about two and a half hours, with a fair tide.
Q. That is to above Bayou Sale lateral?
A. Right to the lateral.
Q. You split that tow up?
A. Yes, sir.
Q. And you bring six or eight booms?
A. Up to the locks.
Q. How long would it take to tow those six or eight booms fro
the lateral up to the lake?
A. From there on you have a head current. Sometimes it tak
a good while.
231 Q. What would you say was a good while?
A. Sometimes it takes as much as three hours.
Q. Would that depend on the size of the tow you towed up?
A. The boat is not quite strong enough to tow up against t
current; there is so much current going through the canal.
Q. You say that is the small boat?
A. Yes, sir.
Q. Was your boat working all the time?
A. Sometimes it was tied up.
Q. Why?
A. When we had a good tide, we would bring a good tow at on
Q. Did you always have logs in the canal?
A. Always.
Q. What was the general instruction in regard to keeping logs
the canal?
A. They kept logs in the canal because they didn't want to ta
too much tow in the bayou.
Q. When you had an accumulation of logs in the canal, then y
would tie up?
A. Yes, sir.
Q. Did you ever see, during the period that you worked on t
boat, did you ever experience a tide so strong that you couldn't ta
a tow up the canal?
A. No, sir.
Q. You never tied up because the tide was so strong against y
that you couldn't go against it?
A. No, sir.
Q. While the Garden City was in use there in the Hanson Can
did you ever see her bring in tows from Portage all the way up
the locks?
A. Yes, sir.
Q. How many booms would she have in a tow?
232 A. She didn't bring very many; she used to come in
Saturday and used to bring up a tow.

Q. And as she came up Saturday, did you have a tow already all the way up to the locks?
A. Sometimes plumb to the locks.
Q. How long would it take to bring them from Portage all the way to the lock?
A. We didn't take many of them.
Q. How many?
A. About four or six booms at a time.
Q. How long would it take you to bring this boat from Portage to the locks?
A. Plumb to the locks?
Q. Yes.
A. I don't know exactly.
Q. Did you ever see both boats in the canal at the same time?
A. Towing from Portage to the locks?
Q. Yes.
A. Not while I was working there.
Q. Did you ever see any barges in the slits while you were working towing logs?
A. Yes, sir.
Q. Often?
A. We used to put some in there ourselves.
Q. Do you know what the horse power of the Garden City was?
A. 45.
Q. And of the Roxine?
A. 28.
Q. That is the little boat you speak of?
A. Yes, sir.
Q. And the one that does the towing from the lateral up to the locks?
A. Yes, sir.
233 Q. Is the canal straight from Bayou Sale to Portage?
A. No, sir; it has a curve in it.
Q. How far ahead can you see from one slip to the other?
A. Not all the time.

Cross-examination:

By Mr. Alpha:

Q. How do you know the horse power of the Garden City is only 45?
Q. Because it is marked on the engine.
Q. Do you realize that you are under oath?
A. Yes.
Q. Did you ever see 45 horse power marked on the Garden City's engine?
A. Yes, sir; right on the engine, if I am not mistaken, right on the front cylinder; if they didn't take it out, it is there yet.
Q. Don't you know that the Garden City's engines has been sixty horse power since about 1908?
A. It was not marked sixty when I saw it.

Q. Don't you know that it was changed from 45 to 60 in Cote Blanche race with J. W. Stucke?

A. The same mark is on there, 45.

Q. You say you quit?

A. Yes, sir.

Q. You mean by that that you were not discharged by the Company?

A. No, sir; me and Mr. Gardener disagreed and I quit.

Q. Who did most of the disagreeing; you or Mr. Gardener?

234 A. Mr. Gardener came there one morning, and he said if we couldn't do the work to get away, and I got away.

Q. What horse power is the Ivanhoe?

A. I don't know.

Q. Don't you know that it is 50?

A. I don't know.

Q. You say you have never seen a tow of timber tide up because of the current?

A. Yes, sir; we could always bring four booms anyhow.

Q. With the Garden City?

A. Yes, sir.

Q. How long did you work for the company?

A. I have been working off and on.

Q. Whom do you work for now?

A. I work for the Adeline Sugar Company.

Q. Did you ever work for the Kyle Lumber Co?

A. I never did.

Q. When barges were being put through the canal, how long is the longest you have seen going through?

A. We used to put them through and keep on with the barge, pass the timber through there.

Q. I mean how many days would be the greatest number you have known of a barge being in the canal trying to get through?

A. We never did put them in the canal until we got through with the timber. If there was too much timber in the canal, we never put a barge in there; we put the barge in the pocket and kept on with the timber.

Q. Would you get it in there in two or three days?

A. Sure.

Q. You never went over three days?

A. No, sir; not over three days.

235 Q. The barge, as I understand you, would be run from one pocket down the canal to the other pocket?

A. Yes, sir; there are pockets all along the canal.

Q. And then wait for the timber to go by?

A. Yes, sir.

Q. And it never took more than three days for a barge to go through?

A. Not as long as I worked there.

By Mr. Mooney:

Q. Do you know whether those locks leak, do you know their condition?
A. They need repair.
Q. Do they leak?
A. Yes; they leak bad.
Q. Has that any effect on the current or tide?
A. Yes.

By Mr. Alpha:

Q. How much of a leak is it?
A. It is a bad leak there; it takes a long time to get through.
Q. Have you any idea of the capacity of that lock?
A. No, sir.
Q. How wide is the leak?
A. It is about six inches wide.
Q. And how long?
A. It goes right along the wall, I don't know how far, down to the bottom.
Q. About six inches wide?
A. Yes, sir.
Q. That leak is running into the canal forty feet wide and a thousand feet long between the locks?
236 A. I don't know; I never measured it.
Q. Do you realize that it would take about seventy-five years to fill that hole with that leak?
A. I don't know.
Q. You say that the leak is so bad that it actually creates a current?
A. Yes, sir.

HARRY B. DEKAY, sworn and examined as a witness on behalf of the United States, testified as follows:

Direct examination.

By Mr. Mooney:

Q. What is your name?
A. Harry B. De Kay.
Q. What is your occupation?
A. Surveyor.
Q. Are you connected with the United States Engineer's office?
A. Yes, sir.
Q. How long have you been employed by the Government?
A. Since February 25th this year.
Q. You have been sent by the District Engineer's office out to St. Mary Parish to make any observations on the Hanson Canal?
A. Yes, sir.
Q. When did you go up there?

A. I arrived there June 25th, and began operations June 26th.
Q. How long did you continue your operations?
A. Until July 17?
237 Q. From June 26 to July 17; does that include both days
A. Yes, sir.
Q. What did you pay most attention to?
A. To the passage of launches and boats and everything through the canal.
Q. Did you make a note of your observations as you went along
A. Yes, sir.
Q. Have you your notes with you?
A. I have.
Q. You have two documents here; is this a typewritten copy the original, in your hand, of the reports that you made?
A. Yes.
Q. These are the reports; is that your handwriting?

(Hands document in question to witness. Witness examin same).

A. Yes, sir.
Q. That is your signature "H. B. De Kay"?
A. Yes, sir.
Q. One of them is dated June 26th and they are all dated, a they?
A. Yes, sir.
Q. And the last one is dated July 17; is that right?
A. Yes, sir.
Q. Have you a summary of these reports?
A. No, sir.
Q. Beginning with your first report, giving the passage of bo through the lock, will you read your report to the jury. Your fi observation was made on the 26th?
A. Arrived at Hanson Canal locks 12.30 p. m.——
Q. Was your first observation of the use of the locks made on t 26th or the 29th?
238 A. The 26th "—found east gate open and west gate close Cypress log about 75 feet long is swung at an angle of abo 45° across east end of canal near mouth to keep lilies from enteri from Bayou Teche. No logs in lock. Gasoline towboat (Ivanho tied just outside of west gate, length about 75 feet, beam about feet, and about 30 feet high from water line, 60 horse power. Bo too high to pass through locks. Am told is used to push rafts in locks where they are taken in tow by smaller boat.

2. Left locks at 5.30 p. m. No boats of any kind have pass through locks since I began observation, and have learned by ca ful investigation that locks will not be used until Monday a. June 28."
Q. That was the 26th when you got there?
A. Yes, sir.
Q. When you speak of the east gate, is that the Bayou Tec gate?

A. Yes, sir.
Q. And the west gate is the one down towards Portage?
A. Yes, sir.
Q. Read your next report?
A. June 28. "Arrived at Hanson locks at 6.45 a. m. Conditions ame as when I left Saturday evening June 26. East gate open, est gate closed. Gasoline tow boat (Ivanhoe) tied just outside est gate.
2. At 7.50 a. m. gasolin launch, (name blurred, could not make out) with loaded barge in tow, passed through east gate, which as open, launch about 35 feet long, about five feet wide, and about five feet high, power 4-cyl. engine, barge about 25 feet wide, 3 feet high, and about 75 or 80 feet long, loaded about 3 feet above the deck with slabs and odd pieces of lumber. Name barge "Hanson Lumber Co." Passed through as far as west gate nd stopped, arrived at 8.10 a. m. West gate still closed. East gate as closed at 8.03 a. m.
3. At 8.30 a. m. west gate is being opened. Wide open at 8.35 . m. Launch cast off tow lines and proceeded on through canal. At 9.07 a. m. the Ivanhoe had taken barge in tow and followed. est gate left open.
4. Left canal at 6.00 p. m. no more boats have passed through he locks to-day and no more until Tuesday a. m. June 29."
Q. How long did it take that barge and boat to pass through the ocks?
A. The time she entered the east gate until the time she passed ut through the west gate; if you have not got that here, you can gure it out.
Q. We will pass that for the present. When did the barge enter he east gate?
A. 7.50 a. m.
Q. When did she pass through the west gate?
A. The launch cast off the tow lines and proceeded on through he canal at 8.30.
Q. They were in the locks then from 7.50 to 8.30; is that correct?
A. Yes, sir.
Q. This is the time consumed while the barge was actually in the ocks?
A. Yes, sir.
Q. From 7.50 to 8.30?
A. Yes, sir.
Q. Now give us your next report?
A. June 29. "Arrived at the canal at 6.50 a. m. Condition same as when I left June 28. East gate closed, west ate open.
2. At 1.30 p. m. can see launch coming through canal with tow f logs, launch at the head of tow; entered west gate (which was pen) at 3.05 p. m., launch about 35 feet long, about 5 feet wide nd 5 or 6 feet high. Name of launch "Roxene;" is launch referred to in previous report.

3. Raft consisted of 9 sections or booms, of about 36 logs each launch got about 200 feet inside of lock and stopped at 3.20 p. m 5 sections were left outside of lock and launch with the 4 head sec tions got under way at 3.40 p. m., reached east gate at 4.10 p. m and stopped; west gate closed at 4.15 p. m. The tow of 4 section extends from east gate to the west gate."

Q. When was the west gate closed?

A. 4:15 p. m.

Q. And when was the east gate opened?

A. "Launch and tow will remain in lock until Wednesday a. m June 30. Left canal at 5.00 p. m.

Q. So they got into the lock and stayed there that night?

A. Yes, sir.

Q. Now take up the next day.

A. June 30. "1. Arrived at canal at 6.35 a. m. Launch (Ro ene) had the tow of 4 booms half way out of lock. Was told the started work about 6.10 a. m. Rear end of section passed throug lock at 7.00 a. m. Gate left open.

241 2. At 10.00 a. m. launch returned and passed throug gate. East gate closed at 10.05 a. m. West gate opened a 10.25 a. m. and launch passed through. Launch took 4 of the booms left in canal June 29, and got under way at 11.10 a. m., en tered west gate at 11.20 a. m. and reached east gate at 11.50 a. m West gate closed at 11.55 a. m. East gate opened at 12.05 p. m and launch with tow passed through, rear end passed through gat at 12.30 p. m.

3. At 3.00 p. m. the Roxene with barge of wood in tow entere east end of lock, barge about 25 feet wide, and about 50 feet long East gate closed at 3.10 p. m. West gate opened at 4.00 p. m. an launch with barge passed through. Barge was pushed into a wid space in canal just outside of lock, and left there. Launch the took the remaining boom of logs in tow and entered lock at 4.4 p. m.

4. Launch and tow will remain in lock until Thursday, a. m July 1.

Left canal at 5.30 p. m.

July 1. "1. Arrived at canal at 6.35 a. m. Launch left boom o logs in lock, went back and took barge of wood in tow and at 6.5 proceeded on through canal.

2. At 12.45 p. m. can see Ivanhoe and Roxene with tow comin through canal, reached west end of lock at 1.40 p. m. Tow consiste of 19 booms of logs and 2 barges. Roxene took 3 booms, picked u one boom left in lock this a. m. and entered lock at 1.50 p. m reached east gate at 2.10 p. m. West gate closed at 2.15 p. m. Eas gate opened at 2.30 p. m. and Roxene got under way with tow Rear end reached east gate at 2.45 p. m.

242 3. Locks will not be used again to-day. 16 booms of log and 2 barges remain in canal outside of west gate."

Q. Now, according to that, from the time she entered the west gate until she reached the outside of the east gate, how much time elapsed?

A. An hour and 55 minutes—no—55 minutes.

Q. In other words, the lapsed time is the difference between 1.50, when she entered the west gate with the tow, with the four booms, and 2.45, when the read end of the last boom passed out of east gate?

A. Yes, sir.

Q. The lapsed time, then, was from 1.50 to 2.45, a total of 55 minutes?

A. Yes, sir.

Q. Now take your next report.

A. July 2. "Arrived at canal at 6.35 a. m. Conditions same as when I left canal July 1.

2. At 11.30 a. m. the Roxene entered east gate. Gate closed at 11.35. West gate opened at 11.50 a. m., and launch passed through, took tow of 4 booms and entered west gate at 12.15 p. m., reached east gate at 12.40 p. m. West gate closed at 12.35. East gate opened at 12.50 p. m. and launch and tow got under way, read end passed through gate at 1.10 p. m.

At 2.55 p. m. Roxene returned, passed through east gate, at 3.00 p. m. Gasoline stern wheel launch "Cruiser of Garden City" passed through east gate, launch about 35 feet long, about 8 feet wide, and about 6 feet high. East gate closed at 3.06 p. m. West gate opened at 3.15 p. m. "Cruiser" passed through and tied at side of canal outside of gate. Roxene took tow of four booms and returned, entered west gate at 4.00 p. m., reached east gate at 4.25 p. m. West gate closed at 4.30 p. m.

3. Roxene and tow will remain in lock until Saturday a. m., July 6."

July 3. "1. Arrived at canal at 6.35 a. m. East gate opened at 6.40 and Roxene and tow passed through. Roxene stalled about 100 feet outside of gate at 6.50 a. m. Started again at 7.05 a. m., near end of last boom passed through gate at 7.15 a. m. At 10.00 a. m. Roxene returned, passed through east gate. Gate closed at 10.05 a. m. West gate opened at 10.20 a. m. and Roxene passed through and took tow of 4 booms, returned entered west gate at 10.50 a. m., reached east gate at 11.20 a. m. West gate closed at 11.25 a. m. East gate opened at 11.40 a. m. and Roxene with tow passed through, rear end of tow passed through gate at 11.55 a. m."

Q. What was the total lapsed time between the entrance of that tow into the west gate and the time the rear end of the tow passed out of the east gate?

A. One hour and five minutes.

Q. That is the total time which was consumed in the same operation from the time she entered the west gate, closing the west gate, filling the lock, and passing her through the east gate out into the Bayou?

A. Yes, sir.

Q. That took one hour and five minutes?

A. Yes, sir.

Q. Now continue. She had four booms that time?

A. Yes, sir. "2. At 1.45 p. m. going through canal on 'Cruiser of Garden City,' passed four booms and two barges in canal
244 outside of lock. On trip out through swamp saw about 50 booms and 1 empty barge ready to come through canal. Returning reached lock at 6.40 p. m. 4 booms and a barges still in canal outside of lock; one barge 20 feet wide, and about 50 feet long, other 20 feet wide and about 25 feet long. This tow will pass through lock Sunday a. m., July 4. Roxene is in lock tonight."

July —. "1. Arrived at canal at 7.00 a. m., at 7.30 a. m. west gate opened and Roxene passed through, took tow of four booms and two barges and entered gate at 7.45 a. m. Stalled at 7.50 a. m., when about half way through gate, started again at 8.10, reached east gate at 8.25 a. m. West gate closed at 9.10 a. m. Tow had to be lapped in order to get it inside lock and close gates. One *book* about 300 feet long. East gate opened at 9.50 a. m. and Roxene with two of one boom and two barges *barges* passed through. Roxene returned at 10.50 a. m. Three remaining booms were coupled and got under way at 11.35 a. m., rear end passed through gate at 11.45 a. m.

2. This is last of the tow consisting of 19 booms and 2 barges, which came through canal July 1. No more work until Monday a. m., July 5."

July 5th. "Arrived at canal at 6.45 a. m. Left lock at 8.20 a. m. on the Cruiser, which was tied outside lock, going through canal. Turned from canal on reaching Bayou Portage, and proceeded into Bayou about ⅛ mile to where raft consisting of 43 booms was tied in Bayou.

2. At 12.00 o'clock Ivanhoe with 2 barges of wood reached Bayou Portage, followed by the Roxene, these barges were towed
245 from mill through lock and taken from that point by Ivanhoe. Barges each about 20 feet wide, about 3 feet high, and about 70 feet long. Each barge loaded about 3 feet above deck with wood. Ivanhoe secured barges in canal, leaving entrance to Bayou Portage clear. Roxene entered Bayou and made fast to 4 booms, but could not move them owing to strong current. Roxene cast off tow lines and ran into canal, and Ivanhoe entered Bayou and made fast to 12 booms, started at 12.44 p. m. At 1.37 p. m. rear end of last boom passed Ivanhoe, making about ½ mile per hour against about ½ mile per hour current. Roxene then entered bayou and took 2 booms and 1 empty barge and started, also making about ½ mile per hour.

3. Left Bayou Portage at 4.30 p. m. on Cruiser, passed Roxene and Ivanhoe with tows, and reached lock at 5.22 p. m. Cruiser tied outside lock. No boats will pass through lock until Tuesday a. m. July 6."

July 6th. "1. Arrived at canal at 6.50 a. m. Cruiser still tied in canal just outside of west gate.

2. At 7.30 a. m. can see Roxene with tow coming through canal. Roxene at head of tow entered west gate at 8.55 a. m. Tow con-

sisted of four booms. Reached east gate at 9.25 a. m. West gate closed at 9.32 a. m. East gate opened at 9.50 a. m. and Roxene started with tow. Stalled with tow half way through gate at 9.55. Started again at 10.10 a. m. Rear end of last boom passed through gate at 10.15 a. m.

3. At 5.00 p. m. Roxene returned, entered east gate. Gate closed at 5.10 p. m. Roxene will remain in lock tonight."

246 Q. What was the total time from the entrance of the boat through the west gate and the time she passed out through the east gate of the locks?

A. An hour and twenty minutes.

Q. And you say she was stalled for fifteen of those 80 minutes in your report, didn't you say she was stalled for fifteen minutes?

A. Yes, sir.

Q. And excluding the time she was stalled, it consumed in actual operation an hour and five minutes?

A. Yes, sir.

Q. Read your next report.

A. July 7. "Arrived at canal at 6.50 a. m. West gate open and Roxene gone.

At 7.10 a. m. Roxene coming through canal with tow. Roxene entered west gate at 8.35 a. m. Tow consisted of four booms. Reached east gate at 8.52 a. m. West gate closed at 7.57 a. m. East gate opened at 9.10 a. m. and Roxene started with tow. Rear end of last boom passed through gate at 9.32 a. m. At 11.20 a. m. Roxene returned, entered east gate, gate closed at 11.25 a. m. West gate opened at 11.50 a. m. and Roxene passed through. At 2.05 p. m. the Cruiser entered west gate. Gate closed at 2.10 p m. East gate opened at 2.25 p. m. and Cruiser passed through. At 4.50 p. m. Cruiser returned, entered east gate, gate closed at 4.57 p. m. West gate opened at 5.20 p. m. and tied in canal outside of lock."

Q. Now referring to that part of the report where you say that the Roxene entered the west gate at 8.15 a. m. with four booms, that is right at the beginning of the report?

A. Yes, sir.

247 Q. What was the total lapsed time from the moment she entered the west gate until the rear end of the last boom was outside of the east gate of the lock?

A. 57 minutes.

Q. She passed through with four booms in 57 minutes total lapsed time?

A. Yes, sir.

Q. When she came back, when did she enter the east gate?

A. 11.20.

Q. And when did she pass through the west gate?

A. 11.50.

Q. What was the total lapsed time of the boat to pass through from east to west?

A. Thirty minutes.

Q. Now just continue your report.

A. July 8. "Arrived at canal at 6.35. At 6.50 a. m. the Cruiser proceeded on through canal.

2. At 7.05 a. m. the Roxene coming with tow. Roxene entered west gate at 7.55 a. m.. Tow consisted of four booms. Reached east gate at 8.15 a. m. West gate closed at 8.20 a. m. East gate opened at 8.30 a. m. and Roxene started with tow. Rear end of last boom passed through gate at 8.45 a. m.

3. At 10.37 a. m. Roxene with barge in tow entered east gate. Barge about 20 feet wide, about 3 feet high, and about 60 feet long, loaded with wood. East gate closed at 10.45 a. m. West gate opened at 11.10 a. m. and Roxene passed through with barge and proceeded on through canal."

Q. What was the total elapsed time from the moment that the boat entered the west gate until the last boom passed out of the east gate?

248 A. 50 minutes.

Q. Now continue your reading.

A. July 9. "Arrived at canal at 6.50 a. m. East gate closed, west open. Cruiser tied in canal outside of lock. At 7.36 a. m. a barrel of oil was placed on board Cruiser, and she left lock, going through the canal.

2. At 7.40 a. m. Roxene coming with tow. Roxene entered lock at 8.30 a. m., reached gate at 8.45 a. m. Tow consisted of two booms and two barges (empty) each about 20 feet wide, about 3 feet high, and about 60 feet long. West gate closed at 8.50 a. m. East gate opened at 9.05 a. m. and Roxene started with tow. Rear end of tow passed through gate at 9.21 a. m.

At 11.10 a. m. Roxene returned, entered east gate. Gate closed at 11.15 a. m. West gate opened at 11.40 a. m. and Roxene passed on through canal.

Q. What was the total elapsed time for the locking of the two booms and two barges from west to east through the locks?

A. 51 minutes.

Q. What was the elapsed time for the boat re-entering the east gate and passing through the west gate?

A. 30 minutes.

Q. Now continue your reading.

A. At same time a gasoline launch entered gate, launch about four feet wide and about 20 feet long. No name on launch. No. 32. West gate closed at 12.00 M. East gate opened at 12.10 p. m. and launch passed through.

3. At 3.25 p. m. Cruiser arrived at west gate. East gate closed at 3.40 p. m. West gate opened at 3.50 p. m. and Cruiser en-

249 tered lock. Gate closed at 3.55 p. m. At 4.20 p. m. east gate opened and Cruiser passed through.

No more boats to pass through lock to-day."

July 10. "Arrived at canal at 6.40 a. m. The Ivanhoe tied in canal just outside west gate.

2. At 8.35 a. m. Roxene coming with tow. West gate opened at 10.10 a. m. Roxene entered gate at 10.34 a. m. Reached east gate

at 10.53 a. m. Tow consisted of four booms. West gate closed at 11.05 a. m. East gate opened at 11.30 a. m. and Roxene started with tow. Rear end of last boom passed through gate at 11.50 a. m.

3. At 1.30 p. m. Cruiser entered east gate at 2.00 p. m. Roxene entered lock. Gate closed at 2.05 p. m. West gate opened at 2.10 p. m. and Cruiser and Roxene passed through. Cruiser proceeded on through canal and Roxene tied near lock. Cruiser returned at 3.15 p. m. and tied outside lock. No more boats to pass to-day."

July 12. "Arrived at canal at 6.50 a. m. Roxene gone. Cruiser and Ivanhoe still tied near lock.

2. At 8.40 a. m. east gate opened and launch No. 32 entered lock. Gate closed at 8.45 a. m. West gate opened at 9.00 a. m. and launch passed on through canal. At 9.10 a. m. Ivanhoe left and proceeded on through canal.

3. At 10.05 a. m. Roxene coming with tow. Entered lock at 11.00 a. m. Tow consisted of four booms. Roxene reached east gate at 11.15 a. m. West gate closed at 11.20 a. m. East
250 gate opened at 11.30 a. m. and Roxene started with tow. Rear end of tow passed through gate at 11.45 a. m.

At 1.35 p. m. Roxene returned, entered lock. Gate closed at 1.40 p. m. West gate opened at 1.50 p. m. and Roxene passed on through canal."

Q. What was the total lapsed time for the lockage of the four booms?

A. 45 minutes.

Q. And for the lockage of the boat on her return?

A. 15 minutes.

Q. Go ahead and read the next report.

A. "At 3.15 p. m. Roxene coming with tow. Roxene entered lock at 4.15 p. m. Tow consisted of 7 or 8 booms and 1 empty barge, 4 booms towed into lock, remainder left in canal. Roxene and tow will remain in lock until Tuesday a. m., July 13."

July 13. "Arrived at canal at 6.35 a. m. At 6.45 a. m. east gate opened and Roxene started with tow. Rear end of last boom passed through gate at 7.05 a. m.

2. At 9.50 a. m. the Roxene entered lock followed by the gasoline launch Swamper, launch about 4 feet wide and about 20 feet long. Gate closed at 10.10 a. m. West gate opened at 10.20 a. m. and Roxene and Swamper passed on through canal.

3. At 3.25 p. m. Roxene returned and picked up the tow (left in canal Monday p. m., July 12) of four booms and one empty barge. Barge about 6 feet wide and about 25 feet long. Roxene entered lock at 3.35 p. m. West gate closed at 4.00 p. m. Roxene and tow will remain in lock until Wednesday a. m., July 14."

251 July 14. "Arrived at canal at 6.25 a. m. East gate was being opened at 6.30 a. m. Roxene started with tow, at 6.35 a. m. tow was stopped to raise a sinker which had dropped out of forward boom. Started again at 6.40 a. m. Current running up Bayou Teche and Roxene could not take all of tow to mill. At 7.30 a. m. two booms and barge were left in east end of lock and Roxene proceeded with two forward booms.

2. At 10.00 a. m. Roxene returned and made fast to two booms and barge, tow left lock at 10.10 a. m. At 11.45 a. m. Roxene entered lock. Gate closed at 11.50 a. m. West gate opened at 12.10 p. m. and Roxene passed on through canal.

3. At 1.45 p. m. Roxene coming with tow entered lock at 2.50 p. m. Tow jammed in lock at 2.55 p. m., started again at 3.30 p. m. Reached east gate at 3.40 p. m. West gate closed at 3.45 p. m. East gate opened at 3.53 p. m. and Roxene started with tow at 3.55 p. m. Rear end of tow passed through gate at 4.05 p. m.."

July 15. "Arrived at canal at 6.45 a. m. At 7.25 a. m. Roxene entered lock with two barges of wood, each about 20 feet wide, about 3 feet high, and about 60 feet long, both loaded with wood. Gate closed at 7.35 a. m. West gate opened at 7.50 a. m. and launch with barges passed on through canal.

A. At 7.55 a. m. Cruiser entered lock. West gate closed at 8.00 a. m. East gate opened at 8.15 a. m. and Cruiser passed through.

3. At 3.30 p. m. Roxene coming with tow. Reached lock at 4.15 p. m. Gate opened at 4.35 p. m. Tow consisting of three
252 booms and one empty barge (about 20 feet wide and about 60 feet long) was inside lock at 5.00 p. m. West gate closed at 5.05 p. m. Tow will remain inside lock until Friday a. m., July 16."

July 16. "Arrived at canal at 6.45 a. m. Tow was 2/3 out of lock and stalled, started again at 7.08. Rear end passed through gate at 7.14 a. m.

2. At 9.50 a. m. Roxene returned, entered lock, gate closed at 9.55 a. m. West gate opened at 10.10 a. m. and launch passed on through canal.

3. At 12.30 p. m. Roxene coming with tow. Launch entered lock at 1.10 p. m. Tow consisted of four booms. Gate closed at 1.30 p. m. East gate opened at 1.45 p. m. and Roxene started with tow. Stalled at 2.00 p. m. with rear boom half way through gate. Started again at 2.17 p. m. Rear end passed through gate at 2.20 p. m.

4. At 5.00 p. m. Roxene returned, entered lock. Gate closed at 5.05 p. m. Launch will remain in lock until Saturday a. m., July 17.

July 17. Arrived at canal at 6.45 a. m. Roxene gone.

2. At 8.20 a. m. Roxene coming with tow entered west gate at 9.00 a. m. Tow consisted of four booms. Tow jammed in gate at 9.03 a. m. Started again at 9.35 a. m. West gate closed at 9.50 a. m. East gate opened at 10.05 a. m. Roxene started with tow. Rear end passed through gate at 10.15 a. m.

Left canal at 10.30 a. m."

Q. You spent nearly all of your time at the locks?

A. Yes, sir.

253 Q. And it was your purpose to check the actual time consumed in the lockage of these various tows as they passed through those locks?

A. Yes, sir.

Q. Those reports covered your observations?
A. Yes, sir.

Offer.

Mr. Mooney: In connection with the testimony of the witness, we offer the reports in evidence.

Q. What character of gates are used at that lock; I mean, can you describe them to the jury by illustrating how they swung; they are double gates that meet in the middle?
A. Yes, sir; they meet in the middle, and swing inside when they open.
Q. What condition are they in, do they close tightly?
A. No, sir; not very; the water leaks through the centre quite a good deal.
Q. Is there much leakage there?
A. Well, near the bottom, yes, sir.
Q. Are you in position—if not don't say it—but if you are in a position to say, how far from meeting do the ends of the gates lack when they are swung together, how much space is left in there? As I understand you, the leakage is created when the gates are swung together?
A. Yes, sir.
Q. They don't fit tight?
A. I never saw them fit tight together.
Q. Then, as I understand your testimony, that leaves a gap in there between the center and the edge of the gates?
A. Yes, sir.
254 Q. How much of a gap is that?
A. I should say, near the water line, two or three inches.
Q. And above?
A. Near the top the gates come together pretty well.
Q. Does the water come through pretty strong, through that leakage?
A. Yes, sir, it does.
Q. By whom are those locks operated?
A. By the men on the launch when they pass through.
Q. They open and close the gates themselves?
A. Yes, sir.
Q. You mean the crews of the boats?
A. Yes, sir.
Q. There is no other person that is charged with this duty?
A. No, sir.
Q. Did you make known who you were and what you were doing there?
A. After a time they found it out.
Q. You didn't make any secret of it one way or the other?
A. No, sir.
Q. You didn't tell anybody but you didn't make any secret of the fact that that was what you were there for?
A. No, sir.

Q. You include then in the time you have given the time t
is consumed by the crew in their opening and closing the ga
do you?
A. Yes, sir.

255 Cross-examination.

By Mr. Alpha:

Q. The Hanson Lumber Company knew that you were there
the Canal, did it not?
A. Several days after I began observations, yes, sir.
Q. How long were you there observing before the Company kn
you were there for that purpose, or there at all?
A. Well, perhaps two or three days before Mr. Gardner cal
on me.
Q. State whether or not the Company offered to show you a
thing you desired to look at?
A. Yes, sir; they did.
Q. Didn't the Company take you down to the canal to show y
the way the locks were handled?
A. Yes, sir: I made a note of that.
Q. You made note of the fact that you went down the canal, b
I think your notes don't show how you happened to go down the
didn't the Company take you on its own boat?
A. Yes, sir.
Q. Didn't the Company offer you every facility to make any
servations you saw fit to make?
A. Yes, sir.
Q. Did you detect it trying to conceal anything from you?
A. No, sir.
Q. Did you measure the width of those barges?
A. I did not.
Q. Was it Mr. Clarence Gardner who talked with you first?
A. Yes, sir.
256 Q. If he has testified that no barge ever went through t
canal more than 22 feet wide, would you care to dispute th
A. No, sir.
Q. You merely approximated the width at 25 feet?
A. 20 feet.
Q. Then any width that you have given in your reports is
approximation only?
A. Yes, sir.
Q. Did you walk from one end of the barge to the other, step
as surveyors sometimes do, to take rough measurements?
A. No, sir.
Q. You merely stayed on the dump and looked at it in the wate
A. Yes, sir.
Q. You say the width of the leakage is about two or three inch
wide?
A. Yes, sir.

Q. About how much head water was against the gate when you were there?
A. Sometimes nearly a foot.
Q. Does not this leak occur from the timber rubbing off the corners of the gates?
A. I think it does; that is the way it looked to me.
Q. Doesn't it appear that the corners are worn at this place where the gates come together?
A. Yes, sir.
Q. You stated that the leakage or the hole in the gates was only below, and that they fitted better on the top?
A. Yes, sir.
Q. It is only below that the timber could scrape these corners off?
A. Yes, sir.
257 Q. Did you make a calculation while there as to the amount of water that leak would let through in an hour in the twenty-four hours?
A. No, sir.
Q. Would it be enough to cause a current in the canal?
A. No, I don't think so; there is not much of a current.
Q. What kind of a current would it cause?
A. Near the locks it runs through pretty fast, but it wouldn't cause much of a current further down in the canal.
Q. I say, about how much of a current?
A. I couldn't say.
Q. Would it be one foot an hour, would it cause any current motion in the water at all?
A. It does, coming through, yes, sir.

Major E. J. DENT, recalled:

By Mr. Mooney:

Q. You have already testified. Mr. De Kay was sent to the Hanson Canal to make these observations by your direction, was he not?
A. Yes, sir.
Q. Why did you deem it proper to make careful observations of the working of the locks?
A. Because I felt that the capacity of the canal as a whole would be fixed by the capacity of the locks. I felt that any amount of traffic that could be put through the locks could be readily carried through the balance of the canal, if suitably regulated.
Q. In view of the testimony you have heard, and the result of Mr. De Kay's observations, do you feel that the canal can be
258 operated so as to give the full supplies of the logs to the Hanson Lumber Company which they now require and also be of service to the public?
A. I do.
Q. What provision has been made by the Government for any improvement in the canal?
A. Congress 1907 adopted a plan for a canal five feet deep and

40 feet in width at the bottom, with suitable side slopes. With those wide slopes, that would give a width of 60 feet to 70 feet at the waterline. The money was appropriated, based on the estimated cost at that time. With the funds appropriated in that act and the next two or three years, we now have available something over $116,000. Congress had an act passed in 1912, authorizing that, of that fund available, not to exceed $65,000 might be paid to the Albert Hanson Lumber Company for title to their canal. Assuming that we do pay the Albert Hanson Lumber Company $65,000 for title to their canal, there will remain approximately $51,000 available for widening the canal up to the limits fixed by Congress, which are five feet in depth and 40 feet in width at the bottom.

Q. This improvement of widening and so forth that you have described would be a very material improvement on that canal?

A. The canal at the present time is, as I understand, about four to five feet in depth, minimum depth, and having a width at the surface of 35 to 40 feet. Now we would widen it on the surface, which is a very important consideration in logging. We would widen it at the surface from sixty to seventy feet.

Q. That would almost double the width of the canal?

A. Nearly double it.

Q. Is that money available for immediate use?

259 A. Yes, sir.

Q. Is there anything that would prevent the Government, so far as you know—you are in charge of this district——

A. Yes, sir.

Q. —is there anything that you know of that would prevent the Government from going to work immediately in taking charge of this property and making the improvements?

A. As soon as the Government obtained possession of the canal, I would make a recommendation to the War Department that the sum that is available be used in widening the portion of the canal westward of the locks.

Q. I understand you have been over the canal property yourself, you are familiar with the property?

A. Yes, sir.

Q. And you have been present in Court during the testimony given by each and all of the witnesses?

A. Yes, sir.

Q. Now, notwithstanding the testimony of Mr. Kempner, are you still of the opinion that the canal in its present condition could be of considerable service to the public and, at the same time, to the Albert Hanson Lumber Company?

A. I am absolutely convinced that my office can draw up, with the aid and assistance of the people who may have to use that canal, can draw up a set of regulations for the use of that canal that will enable the general public to use it as much as they want to, and will enable the Albert Hanson Lumber Company to log their mill to the extent of 75,000 feet per day, which is understood to be the capacity of the mill.

Q. You have spoken just generally of conferring with the people who have to use the canal; is that usual?

A. That is required by the regulations.

260 Q. In adopting the regulations which are to cover the use of the canal, I mean?

A. It is required by the regulations that everybody who is likely to use the canal be consulted, be given an opportunity to make their views known.

Q. And that was exactly what you proposed to do in submitting your regulations to the Albert Hanson Lumber Company, and which you now propose to do if the canal is taken over?

A. The usual procedure in this is that our office makes a rough draft of a set of regulations that we think might be adaptable. We then submit that rough draft somebody who we think is familiar with the canal and who is an important user of the waterway. Based on the result of that conference, we amend those regulations, or the draft of those regulations, and we continue that process until we are satisfied we have something that will satisfy the needs of everybody. When we feel satisfied that we have gotten to that stage, or as near to that point as we can possibly get, then we call an advertised public hearing in which everybody is invited to attend, and in which everybody is placed on notice that they can have their say then or never. Following that, the regulations are forwarded from my office to the Secretary of War for his approval, provided they are not changed in passing through other offices.

Q. When was this you say that Congress passed this act under which you are proceeding?

A. The money was appropriated, or the first appropriation was in 1907, and in that matter Congress did what we technically refer to as adopting the project, in other words, Congress at that time adopted

261 a plan for a waterway five feet deep and forty feet wide on the bottom from Bayou Teche to the Mermentau River. They made the first appropriation at that time, and they made additional appropriations in subsequent acts.

Q. Now on yesterday there was exhibited to a witness a part of that document known as 640 House Document 640 or 610. Do you recall—640, I think that is the one—containing the report of the engineer and certain recommendations. Was that report ever adopted?

A. One of those reports was and the other was not, and I don't know which number is which.

Q. You have your book here containing the documents; will you take that book and straighten out what was actually done?

A. House Document 640, 59th Congress, Second Session, made a recommendation for a channel five feet deep, forty feet wide on the bottom, from Bayou Teche to the Mermentau River. That plan was adopted by the law of 1907. Subsequent to that, House Document 610, 63rd Congress, Second Session, states the report of other boards with regard to the same section of the waterway; 610 was the one that was under discussion yesterday by the witness.

Q. Was that plan ever adopted?

A. The recommendations in Document 610 were roughly as follows: A special board of officers was appointed to investigate this canal. That canal, on page 45 of the document, recommends as follows: For the section of waterway under consideration the Board recommends the construction of a waterway seven feet deep, with a bottom width of 75 feet, from the Teche to the Mermentau along the line, giving the Hanson Canal route for the portion between the Teche and Bayou Carron. That report of the special board
262 was referred, as required by law, to the Board of Engineers for Rivers and Harbors. On page 11 of the same document the report of the Board of Engineers for Rivers and Harbors, reviewing the report of the special board, begins—that report is dated April 7, 1912—on page 17 of that document, the Board of Engineers for Rivers and Harbors, in referring to this section of the intracoastal waterway, makes the following statement: "An estimate of $477,175 is also submitted for a canal five feet deep and forty feet bottom width, following the same route described above to Plaquemine River" and so forth. In paragraph 21 on the same page, "this Board of Engineers of Rivers and Harbors even has already adopted a five foot canal for this section of the route, and the work on the section from Plaquemine Bayou to the Mermentau River is practically completed. The Board of Engineers for Rivers and Harbors does not consider it advisable to adopt a seven foot project at this time believing that the five foot canal will be sufficient for the present demands of commerce."

Q. What was the date of that report?

A. The report of the Board of Engineers for Rivers and Harbors was April 2, 1912.

Q. And that overruled this special recommendation?

A. That overruled it as far as the Board of Engineers for Rivers and Harbors was concerned.

Q. And suggested that it adhere to the plan adopted March 2, 1907.

A. Yes.

Q. The act of Congress making the appropriation was adopting the project?

A. Yes, sir.

Q. Have you marked there the final report of the Chief of Engineers January 15, 1914?

A. I have.

263 Q. Is that what you read from?

A. No, sir; the report of the Board of Engineers of Rivers and Harbors, reviewing the report of the special board, was enclosed with the regular transmittal to the chief. Under date of June 15, 1912, the Chief of Engineers reviews the papers in the case as they stood at that time. His report begins on page 76 of document 610. On page 10 of the document, the Chief of Engineers states, leaving out portions immaterial to this particular section of the canal, "The Special Board recommends favorably at the present time a seven foot deep waterway in all of Section 6. The Board of Engineers of Rivers and Harbors recommends a five foot depth of waterways in

Section 5. The Chief of Engineers does not entirely agree with either board, but he concurs with the special board as to line of route selected, and with the Board of Engineers for Rivers and Harbors as to the lack of urgency in depth at present in excess of six feet in section 3 and five feet elsewhere."

Q. That five feet does not include the Hanson Canal?

A. Section 3 does not include the Hanson Canal. Section 6 which I have referred to above includes the Intracoastal Waterway from the Mississippi River to the Sabine River.

Q. So that was a five foot channel?

A. It was.

Q. Do you contemplate any changes in regard to the bridges over the canal?

A. The bridges across the Hanson Canal must be remodelled. The only action that I have contemplated or taken in that matter is a little estimating with a view to determining what those bridges would cost, and it is the intention of the office, as soon as we have obtained possession of the canal to submit an estimate of the
264 cost of the bridges and to ask Congress to give us the money to place one or more draw spans across the canal, to make the canal open for use of taller boats than can go through it at the present time.

Q. You have seen the Ivanhoe, a boat that the Hanson people use?

A. I don't think I have.

Q. Well, anyway, if that improvement of the bridges is made as contemplated by you, why boats that are considerably higher out of the water than the average Hanson boats that are used in this canal can pass through without any obstruction as far as bridges are concerned?

A. We would have draw bridges to replace the existing bridges; there would be no restriction as to height. It would be necessary eventually to construct new locks on that canal in order to permit vessels wider than can be passed through the present locks to go through it.

By a Juror:

Q. You have stated that if the canal was turned over to the Government it would serve all people using the Hanson Canal. Is it your opinion that the Hanson people will continue their operations at any greater cost than at present?

A. It is my opinion that the equipment now used by the Albert Hanson Lumber Company can, under suitable regulations and at no material expense, tow their logs through the canal on such days as log towing shall have the right of way, and without additional expense.

Cross-examination.

By Mr. Alpha:

Q. How much of the Hanson Canal do you know from observation?

265 A. I have stood on the bridge and looked down a stra
stretch from the bridge. I have been up the canal fo
distance—I don't know quite how much it is in miles—I thin
is the return, but it is indicated on the map as Bayou Sale lat
I think that is about the point, but I can't state positively.

Q. How did you happen to make that trip?

A. I was inspecting the so-called Franklin Drainage Canal
a view of possibly adopting that as a route, and while we wer
the swamps there, we ran up by launch into the Hanson Canal f
distance and then turned around and went back. We went
through the so-called Cut-off to the Franklin Drainage Canal.

Q. Then you didn't go through all the locks or on the Compa
boats?

A. I did not.

Q. What do you know about timber towing?

A. I have seen timber towed in Louisiana, in Oregon, in W
ington, in Idaho, in Arkansas; I have been associated with rules
regulations for timber towing in those places. I might say th
was also raised in the lumber woods of Pennsylvania, where we d
tow timber around, we float it by means of splash pans, lose tim

Q. You think that qualifies you to dispute with experts
practically life long knowledge, do you?

A. I think I am an expert on the question of traffic thro
locks.

Q. From observation alone?

A. Observation and passage through locks on boats myself.

Q. Don't you think that the person who has to fight the b
with adversities of nature themselves is a better judge
266 you are as to the capacity of the canal or the locks of the ca

A. That all depends on the character of the man, as we
his experience.

Q. You mean as to his veracity?

A. No; I mean as to his ability to recognize facts.

Q. Then you think it takes a special kind of ability for a pe
to know whether or not he is going upstream or tied to the ba

A. I think it requires enough ability to keep out of a lun
asylum.

Q. It requires what?

A. Ability to know whether he is towing upstream or whether
is tied up to a bank.

Q. You never worked for a saw mill, did you?

A. My father has owned saw mills and I have worked in
nection with them.

Q. Well, I mean towing timber through the water?

A. No; we didn't tow timber.

Q. You would be surprised if a saw mill offered to hire yo
log its mill, would you not?

A. Yes.

Q. Why?

A. Because I have had no experience in logging mills.

Q. You had several conferences with Mrs. Lawless, had you
A. I think only two.

Q. And you were accorded an ample opportunity in both of those nferences to refer to that $51,000 over-plus, were you not?
A. I have a faint recollection that in the first conference that was erred to, in the second conference it was referred to in more detail.
Q. But those recollections are very faint, are they not?
A. As to those conferences, yes. As to the second con-rence, I know that we discussed the question of enlargement of the nal in detail.
Q. Then didn't you tell Mrs. Lawless, in discussing the widening the canal, that there was no money available?
A. No I did not.
Q. What did you tell her?
A. In the first conference my recollection is exceedingly hazy. In e second conference, I explained to Mrs. Lawrence in detail that e only funds that were available were available for the sole purpose constructing a canal five feet in depth and forty feet on the bot-m. I also explained that under the terms of the law we might be ittle hampered about the side slopes, and that I thought we might etch a point and say that the side slopes should be one on three, at if we made the side slopes one on three and make a total depth of feet, that that would give us at the surface of the water eighteen et on each side, or 36 feet on both sides, and with a bottom width 40 feet and with side slopes of 1 in 3, we would thereby obtain urface width of 76 feet.
Q. Did you ever have a conference with Mrs. Lawrence at which was not present?
A. No.
Q. Didn't you tell Mrs. Lawrence that you could positively not ake any guarantee then, that that was over the scope of your au-ority?
A. I don't recall that I said that, but I will say it now; all I can is to recommend.
Q. And your superiors above you do the official deciding, do they not?
A. Yes, sir.
Q. What would be the necessity of your recommending ything?
A. It is my duty to start the operations to obtain a canal five feet depth and 40 feet in width, as described in the paragraphs which ngress has adopted; it is my duty to see that all obstacles delaying e construction of such a canal be removed, and that the work ogress at the first possible opportunity.
Q. Does not that duty spring from the recognition of the Han-n Canal?
A. No; that duty springs from long time custom of the Govern-ent to place a man in local charge to do the work that the Govern-ent wants done.
Q. What is the necessity of recommending a widening of the anson Canal, if it is already wide enough?
A. To increase the facilities over what they are at present. A

man may be able to exist on bread and water costing him 25 cents a day, but he may want a square meal costing him a dollar and a half.

Q. If the widening is necessary, you are faced with an inefficiency already in the width, are you not?

A. Yes.

Q. Then the width is inefficient, is it not?

A. The width is deficient for the most part of that waterway.

Q. Now then, as long as it remains as narrow as it is, is it not to narrow for the public and the Hanson Company?

A. The present lack of width in the Hanson Canal is a source of expense to the Albert Hanson Lumber Company at the present time and if the public, in addition to the Albert Hanson Lumber Company, were to be given the use of the canal as it stands at present the present lack of width in the canal would be a source of
269 expense to the public as well as the Albert Hanson Lumber Company.

Q. In your direct examination, you referred to the possibility of having Congress make certain kinds of bridges, so that boats of greater power could use the canal. Didn't you, in Mr. Mooney's office in New Orleans, in a conference between you and Mr. Mooney and Mr. Dresner and myself, say that if an appeal to Congress had to be made, it would take another ten years before any action could be gotten.

A. No, sir.

Q. And didn't you compare the proposed new action from Congress to the ten years that had already elapsed in what you declared to be a mere attempt to buy?

A. I think I recognize what you refer to now. I called attention to the time elapsing from the time Congress made the appropriation up to the time we were able to obtain the right of way and begin work, in the case of the Hanson Canal, to the time that might be required if Congress had authorized another route and we had started to obtain a right of way along that route. I made no assertion that we couldn't get action out of Congress within ten years. My statement was it might take a long time to have titles satisfactory to the Department of Justice prepared in case of another right of way.

Q. Have you observed that in fresh water cypress floats high and salt water cypress floats low?

A. No; I don't know that.

Q. Did you hear Mr. W. B. Smith testify?

A. Yes, sir.

Q. Did you hear him refer to those passing pockets cut in a piece of canal in the open sea marsh?

A. Passing place.

270 Q. Yes. What have you got to say on the necessity of passing places in the Hanson Canal?

A. In the narrow sections of our canals throughout the State of Louisiana we excavate passing boxes at what we consider suitable intervals for commerce; that is considered a part of the project, even though the project simply says a canal five feet deep and 40 feet on

ottom. There is a general law which authorized the widening terways in restricted localities where necessary.

If the Government would take over the Hanson Canal as a of this proceeding, would your office cut passing boxes only eet long?

I do not know.

. Mooney: The Government closes its case.

ALTER Y. KEMPNER, recalled:

By Mr. Alpha:

State whether or not your acquaintance with the Hanson Canal fficient to allow you to make a sufficiently safe approximation on onnage that goes through the canal?

It is.

Well, approximately, what is the tonnage, the lock tonnage e, in twenty-four hours?

The average mill cut is 75,000 feet. The timber in the log hs about seven tons per log. The lumber itself weighs about five the waste makes the difference. That would be 262½ tons of logs that must pass through the canal every day alone. In addition to that, the barges of wood go to pull boat, supplies that go to both pull boat and dredge boat, and the tonnage ne boats that pass back and forth would make considerably more n 300 tons per day, or 1,800 tons per week.

If the Calcasieu Canal, testified to by the witness, 22½ miles , carries an average of 10 tons a day, how much more than that the Hanson Canal carry?

That would be thirty times as much.

State whether or not log tonnage is the hardest navigating nage that you know of?

It is the hardest that I know of, yes, sir.

Mr. Bourdreaux, a witness for the government, gave evidence ut a canal where the Wilbert Company, the Brownell-Drewes mber Company and the Kyle Lumber Company, all three logged ir mills. State whether or not you know that canal system?

Yes; I know that system of canals and the adjoining water rs, and I was in there while they were logging.

State whether or not the logs for some of those mills go down-eam?

The logs for the Kyle mill and for the Brownell-Drewes Lum- Company.

The Court: That is what he testified.

Then do you know whether or not any portion of the logs went stream?

The logs for the Wilbert Lumber Company went upstream.

How far upstream?

They went a mile or two in the canal, and then they went up and River for maybe fifteen miles or more out there.

272 Q. State whether or not the two lumber companies comin downstream with their timber used the same canal all th way?

A. At the time I was over there the Kyle Lumber Co. was loggin in Bayou Chacahoula, which has been dredged out at the joint e pense of the Brownell-Drewes, Kyle and Wilberts. They were co ing downstream through Bayou Chacahoula, Brownnell-Drewes Lum ber Company was coming downstream through another canal whic connected with Bayou Tigres, the point where they reached the com mon channel was in Lake Natchez, both canals entered Bayou Tech at the upper end.

Q. They both used the same canal?

A. Not in the same direction at the same time. Now the Wilber were preparing at that time to log that timber at another poin which they may have since begun logging. The Kyle Lumber Com pany is not logging in there now, unless it has gone in in the la few months. Now the Wilberts would have to tow downstream pa ing the mills of the Drewes, into Lake Natchez and then upstrea into Bayou Chacahoula passing the Kyle mills.

BEN LAWS, sworn and examined as a witness on behalf of the D fendant, testified as follows:

Direct examination.

By Mr. Alpha:

Q. What is your name?

A. Ben Laws.

Q. Did you work for the Hanson Lumber Company?

A. Yes, sir.

273 Q Did you ever work for the Kyle Lumber Company?

A. Yes, sir.

Q. Mr. Bourdreaux testified for the United States yesterday th he measured certain timber that was towing through the Cancien Canal, and that four months of the year the current ran adverse the tow, and that the towing continued through those four month the same as any other time. I referred to Mr. Laws as being th person who logged the timber. Are you that person?

A. Yes, sir.

Q. State whether or not the towing was the same when the cu rent was against you and when the water was still?

A. It was not. It was late in the spring, when the head wat was coming down the Atchafalaya. The tide ran towards the launc about ninety days, but that slacked up almost still, and during th period we got entirely blocked off at the pull boat. We had fi miles of available canal to stow this timber in. That whole fi miles was blocked solid.

Q. Why were you stowing that solid timber?

A. Simply because we couldn't pull against the tide in the Ca cienne Canal.

Q. How long were you logging that timber for the Kyle Lumber Company?

A. A little over two years.

Q. How long did Mr. Bourdreaux work there, if at all?

A. I can't say that he worked there at all. He was under pay by a company logging in the canal a short distance from there.

Q. State whether or not it was necessary to get other boats to help pull through that canal when the current started?

274 A. They had three or more boats at times, when this current was bad, and that didn't keep it out the way.

Q. Give some of the names of those boats or boat owners?

A. The tugboat by the name of the Brazil; there was a boat owned by a man named—I don't know the name of the boat, about the same size. Both of these boats are as strong as the Dew Drop or Roxene, the boat handling the timber in the Hanson Canal. There were two small boats—I don't know who owned them—they were not there but a short time.

Q. You say that the current was only about ninety days?

A. Yes, sir.

Q. Now when was it that time timber was being stored out there because it couldn't get through the canal?

A. The time this current was running towards the launch.

Q. State whether or not, in order to stow that timber, the Kyle Lumber Company had to go to considerable expense?

A. It had to get timber from other sources, or they could not have run the mill.

Q. What I mean is, making preparations to stow it, such as driving piling and so forth?

A. There was piling in Bayou Lafayette, a distance of three quarters of a mile.

Q. And how many miles of timber did you say you held in storage because of this current?

A. About five miles in a canal forty feet wide that was blocked solid.

Q. What year was that?

A. That was in 1913.

Q. That was the same year was it, that the Riggs Company got some of the timber?

A. Yes, sir.

275 By Mr. Mooney:

Q. How does that current compare with the current in the Hanson Canal?

A. It is not to be compared.

Q. You mean it is much worse, much stronger?

A. No, sir; it is not near as strong; you could pull against it.

Q. You are talking about what canal now?

A. I am talking about the Cancienne Canal.

Q. Which current do you mean is the stronger one, on the Cancienne Canal or in the Hanson Canal?

A. The one in the Hanson Canal.
Q. Is stronger than the other?
A. Yes.
Q. And that other one was so strong that for three months yo couldn't pull against it?
A. You could pull against it, but with very little timber.
Q. Have you ever known a period as long as a week that yo could not pull timber in the canal?
A. Yes; that was in 1909.
Q. Any time since 1909?
A. Yes.
Q. When?
A. In 1910.
Q. And 1911?
A. And I recall 1911.
Q. You say that the Hanson Canal current is stronger than th Cancienne Canal current; that is your statement?
A. Yes.
Q. And that for three months the current was so strong yo couldn't pull against it?
A. You could tow against it.
276 Q. I thought you said you tied up five miles of timber?
A. We tied some of the timber up; not all of it.
Q. The truth of the matter is you got your timber easier fro some other place while that current was running so strong?
A. I didn't have anything to do with getting timber from an other place.
Q. You could have towed timber against that current?
A. In the Cancienne Canal?
Q. Yes.
A. They could have towed some. I had nothing to do with th towing; I was looking after the timber, putting it in condition f that purpose.
Q. You didn't tow it?
A. No, sir.
Q. But you also testified they couldn't tow it; is that correct incorrect; do you want to change that?
A. I said they didn't tow it.
Q. You don't intend to say they couldn't tow it?
A. They tied the boats there; we were in there, but whether the could do it I can't say, but they didn't do it.
Q. You have been called in here now for the purpose of showin that current was so strong during that period that you couldn't to logs against it. Do you want to go on record as saying you couldn tow logs against that current?
A. It was running, so they didn't do it; whether it was becau they couldn't do it. I can't say.
Q. But you say it was not as strong as the current in the Hans Canal?
A. No, sir.

277 *Judge's Charge.*

GENTLEMEN:

The question before you is to determine how much the Government should pay the defendant for this canal. (The Government has the right to take it.) (The fact that their executive officers have brought this suit is conclusive on the question that it is to be taken for a public purpose,) and the simple fact that you have to find is the damage to the defendant, how much is that canal worth to him that he is going to be deprived of by the Government taking it over. That is all that there is to it.

Coming to consider the value. You have heard what it cost to dig, what it would cost to dig it now, this contract that they made to sell it, and the reasons that induced them to make the contract. All that evidence you will consider, but you can also consider your own knowledge of human affairs, and your own special knowledge that may appertain to this particular part of the country, or anything that men such as yourselves, living out there, ought to know.

Now you are not bound by the $65,000 that they agreed to; if you think they ought to get more than that, why you can award them more than that. If you think they ought to get less than that, you can award them less.

You cannot consider as an element of damages the inconvenience that they say they will have by the use of the canal together with other people. That is entirely too speculative, too remote, to form an element of damages. What you must endeavor to ascertain is the present actual damages that they would suffer, the damages, the compensation, that the Government ought to pay for the tak-
278 ing over of this canal to be used by the public in connection with themselves and everybody else.

Now then, gentlemen, you are the sole judges of the facts, of the weight and sufficiency of the evidence and of the credibility of the witness, and you must resolve the facts, find what they are, find the value and fix it. You will elect your own foreman. Under the law of Louisiana, you are duly required to reach a verdict by three-quarters of your number. It would be better of course if your verdict was unanimous, but three-quarters is sufficient under the law of Louisiana, nine men can concur in the verdict.

Mr. McCaleb: I except to the charge of the Court, and will file a bill of exceptions in due course.

Mr. Dresner: May it please the Court to instruct the jury as to the interest of this minor.

Mr. Alpha: She says she has no interest.

Mr. McCaleb: I don't see any interest for the jury to pass on.

Mr. Mooney: She disclaims any interest.

The Court: If she disclaims any interest, there is nothing for the jury to pass on. Suppose you draft a verdict and we can send it up to the jury. You can retire, gentlemen, and begin your deliberations and the attorneys will draw up the form of verdict.

279 EXHIBIT LETTER FROM ASSISTANT SECRETARY OF WAR TO THE HONORABLE ATTORNEY GENERAL, DATED OCTOBER 14, 1919.

142,434.
E. D. 58013/777. War Department, Washington H. T. JMC. F. V. A.

October 14, 1919.

The Honorable the Attorney General.

SIR:

In the river and harbor act of March 2, 1907, Congress adopted a project for an inland waterway channel between Franklin and Mermentau, La., and in the act of July 25, 1912, authorized the Secretary of War to purchase, for use as a part of said waterway, the so-called Hanson Canal, at a cost not to exceed $65,000.

The canal is owned by the Albert Hanson Lumber Company, Limited, and for several years this Department has been endeavoring to effect its purchase. The company is willing to accept the sum of $65,000 for the property, but owing to defects in title to the right of way it has been found impracticable to secure an acceptable deed of conveyance. It is therefore necessary to take title by condemnation, and I have the honor to ask that the United States Attorney for the Eastern District of Louisiana be instructed to institute and conduct proceedings to that end.

This department is in possession of abstracts and other muniments of title, which will be transmitted to the United States Engineer Office, Customhouse, New Orleans, where they will be available for use of the United States Attorney. The District Engineer, Lieut. Col. Herbert Deakyne, Corps of Engineers, will render such assistance in the proceedings as may be practicable.

280

Very respectfully,

(Signed) (Signature not legible).
The Assistant Secretary of War.

142,434-25.

Department of Justice.

October 21, 1919.

Landstitles.

Regulations to Govern Navigation and the Floating of Logs and Rafts of Logs on the Intracoastal Waterway from Bayou Teche, La., to West Cote Blanche Bay, La.

Filed July 21, 1920.

In pursuance of the authority conferred by Act of Congress, approved May 9, 1900, entitled, "An Act authorizing the Secretary of War to make regulations governing the running of loose logs,

steamboats, and rafts on certain rivers and streams," the following regulations are prescribed to govern navigation and the floating of logs and rafts of logs on the Intracoastal Waterway from Bayou Teche, La., to West Cote Blanche Bay, La., through the so-called Hanson Canal, Bayou Portage, Mud Lake, and the Jaws of Little Bay.

281 Regulations.

1. No rafts, cribs, sinker-floats, or logs connected in any manner, shall be of greater width or diameter than 25 feet. Circular chain-booms shall not exceed 20 feet in diameter. No rafts shall exceed 1,000 feet in length, whether in tow, floating or moored.

2. Log tows will have the right of way through the Hanson Canal on Mondays, Wednesdays, Thursdays and Fridays, but on such days they must allow the passage of launches not requiring more than 10 feet in width of the section of the waterway. On all other days of the week, tows must allow right of way to boats of any size if required in the interests of navigation.

3. All timber shall be rafted or held together in such manner as will prevent the sinking of any log, and the raft or crib shall be so fastened or tied that it cannot become separated or bag out, so as materially to change its shape.

4. Rafts and circular chain-booms in transit shall be accompanied by sufficient men furnished with equipment and facilities sufficient to manage the movement of the rafts or booms properly, and to keep them from obstructing unreasonably the movement of other rafts or of vessels navigating the waterway.

5. When rafts are left for any reason with no one in attendance they shall be securely tied to the bank at each end, and at as many intermediate points as may be necessary to keep the timbers from bagging into the stream, and shall be moored so as to conform to the shape of the bank. Rafts shall not be moored at critical
282 points or prominent projections of the banks. Lights shall be displayed in accordance with the provisions of the Federal Pilot Rules.

6. The mooring of all timber to the banks shall be subject to supervision and regulation by the district engineer in charge of the improvement of the waterway or his duly authorized representative.

7. The owner or owners of any raft which is tied to the bank shall keep the same free from water hy-cinths, and in removing the plants they shall be placed on shore or upon the raft itself, and shall not be thrown into the water.

8. Certain tributaries and bayous, bays, lakes, sloughs and cut-offs along the said Intracoastal Waterway may be used as storage ponds or yards for rafts or timbers, provided no private or other rights are invaded, and provided further that an open space, not less than half

of the width of the stream, be left as a fairway in all of the navigab tributaries, which shall also remain open and have an ample cle passage. Said storage spaces shall preferably be protected by boom and should there be any difficulty in maintaining an open chann the parties storing timber or rafts in said places shall provide at their own expense suitable and efficient piles or booms, so plac that the booms cannot float across and obstruct the channel. Pri authority for the placing of said booms must be obtained, and a plication therefor should be made through said district engineer.

9. These regulations shall take effect and be in force on a after —— —, 1920.

War Department, —— —, 1920.

——— ———,
Assistant Secretary of War.

283 EXHIBIT LETTER FROM EMMET ALPHA TO HENRY MOONE U. S. ATT'Y, DATED APRIL 23, 1920.

Filed July 21, 1920.

Franklin, Louisiana, April 23, 1920.

Mr. Henry Mooney,
United States Attorney,
New Orleans, Louisiana.

DEAR SIR:

Pursuant to my promise in connection with the conference h on yesterday at your office, between you and Mr. J. D. Dresner the one side, for the Government, and Mrs. Maggie Hanson Lawl (its president), and myself, on the other, for the Albert Hans Lumber Company, with regard to the proposed proceeding to filed by the Government for the purpose of having the Hans Canal condemned to public use, the position occupied by the Alb Hanson Lumber Company is such that it would be compelled resist the Court proceeding, for the following reasons:

1. Because the present understanding of the company is that Government proposes to condemn for ownership in itself and inst possession for public use; and

2. Because the present width of the canal is only 40 feet, the mi mum of 25 feet of which are used by the company in towing timber to its saw-mills situated on Bayou Teche, from 14 to 20 ho of each day; and

3. Because the company logs its saw-mill exclusiv
284 through this canal, and cannot reduce the time it now c sumes in towing its timber through the canal, by the ap cation of greater power to its tow boats, or by any other means; cannot reduce the width of the rafts of timber; and

4. Because the company and the public in general cannot use the canal, at the present width of 40 feet, because the excess of 15 feet beyond that space necessarily occupied by the company is the maximum, and is too narrow for public navigation purposes; and

5. Because the company, in proposing to transfer the canal to the Government, contemplated a continuation of its exclusive use for supplying timber to its saw-mill until the Government has widened the same to 75 feet by the depth of 7 feet, which dimensions the company was informed by representatives of the engineering department of the Government would be contained in their recommendation of the acceptance of said canal as a part of the intercoastal canal route if the same were, in fact, recommended by them; and which dimensions were subsequently recommended, as appears by the public records of the Government, (Doc. 640, 59th Congress;) and

6. Because the stoppage of operations by the company's saw mill for even a month, which cuts 75,000 feet of lumber per day, would be injurious very much beyond the net profit it would thus lose, because of the disorganization of its labor supply in the present labor shortage that has prevailed through this section for the last three years, and which continues to grow more acute; and

7. Because the company has a timber supply on the west
255 side of Bayou Teche, which can be towed to a saw-mill only through said canal, that will require about 15 years to manufacture into lumber at the capacity of 75,000 feet per day, wherein the stoppage of operations or any material interruption therewith, consequent upon opening said canal to public use at its present width, would enter as a factor in damages due by the Government to the company, for a time in the future (to end with subsequent widening), that the Court could not know during the progress of the trial; and

8. Because the Court, under those circumstances would not be legally authorized in rendering judgment of condemnation against the company, for the want of knowledge of the extent of its future losses on which to base the price of the transfer; and

9. Because the Government possesses the right of condemnation against adjacent proprietors for canal purposes, (not possessed by the company), the damage to whom can be fixed with judicial certainty, thus showing the want of necessity in condemning the Hanson Canal, that will again defeat the power of the Court to do so.

But, in order to avoid the proof of the above facts in its defence if sued in condemnation, or any other proof that will prevent the adoption by the Government of what appears to be the course most favored for the intercoastal route, the Albert Hanson Lumber Company will consent to become defendant in the condemnation proceedings, and will interpose no objection thereto, upon the following conditions:

(*a*) That Miss Georgia Bentz, a minor, who may own 1/24 of the canal strip, and Mr. J. W. Foster, who claims certain rights in said canal, be joined as co-defendants with the company, under
286 allegations which leave unfixed the extent or character of their interests, and alleging only the possibility of their existence—that they may appear and prove the same or not as they shall elect; and

(*b*) That your bill of complaint ask for judgment of immediate condemnation, but with reservation of the right of joint possession between the Government for improvement purposes and the company for logging purposes, to the exclusion of the public, for such time until the canal be made the minimum width of 75 feet and the minimum depth of 7 feet, at the cost of the Government; and

(*c*). That the Government place in escrow, for the benefit of the company and any other party who may prove an interest therein the sum of $65,000.00, to be taken over by it or them after the canal shall have been enlarged to the dimensions above stated, and taken possession of by the Government as a public water-way, to be proved by any party to the proceeding as a part or continuation of the proceeding; and

(*d*) That the right of possession by the company be subsidiary to that of the Government to the end only that the Government shall have the right of preference after improvement operations actually shall have been commenced by it; and that if exclusive possession of all or any part of said canal shall be considered by the agents of the Government to be necessary after the commencement of improvement operations, the company shall entirely abandon possession; and

(*e*) That the right to demand exclusive possession for said improvement purposes shall not exist in the Government until
287 a reasonable notice to that effect, to be fixed by amicable agreement before suit is filed, be given to the company, to the end that its logging apparatus be removed into other timber independent of said canal; and

(*f*) That the Company shall have the same rights of ingress and egress through its lateral canals, as contained in the writing prepared by your office in 1919.

If your Department will bring the suit substantially as above indicated, alleging that the company now is in exclusive possession, my belief is that the other proposed co-defendants will make no appearance; and the judgment in condemnation will convey a perfect title to the Government for improvement purposes and an indefeasible one upon the completion of the improvement.

Respectfully,

(Signed) EMMET ALPHA.

L. B.

(Filed July 21, 1920.)

Times and Places of Holding Courts.

Circuit Court of Appeals, at New Orleans—third Monday in November.
District Court, at New Orleans—third Mondays in February, May, and November; at Baton Rouge—Second Mondays in April and November.

288 Department of Justice,

Office of United States Attorney,

Eastern District of Louisiana,

New Post Office Building.

New Orleans, La., May 22nd, 1920.

Emmet Alpha, Esq.,
Attorney-at-law,
Franklin, La.

DEAR SIR:

For your information, I beg to say that I have this day received a letter from the Attorney General, under date of May 18th, instructing that expropriation proceedings be immediately instituted. I am writing you so that you may be informed.

Respectfully,
(Signed) J. D. DRESNER,
Special Assistant to U. S. Attorney.

D-Y.

289 EXHIBIT LETTER FROM MAJOR E. J. DENT TO MR. EMMET ALPHA, DATED JUNE 3, 1920.

War Department,

United States Engineer Office.

E. J. D.-f.
Address reply to The District Engineer, 320 Customhouse, New Orleans, La.
Refer to File No. —.

New Orleans, La., June 3, 1920.

Mr. Emmet Alpha,
Franklin, Louisiana.

DEAR SIR:

1. Your letter of May 30, addressed to "Department of Engineers, New Orleans, La.", was delivered first to the Board of State Engineers, was sent by them to the United States Engineer Office, Fourth Mississippi River Commission District, 519 Canal Street, and was forwarded by that office to the undersigned.

2. It is evident that an error in transmission of the telegram was made. As received by us, it asked for a copy of proposed legislation.

3. There is inclosed herewith a draft of possible regulations for use of the Hanson Canal should the United States obtain possession of that canal. It will be understood that this draft is tentative only and was prepared by this office as a basis for discussion.

290 4. If the Albert Hanson Lumber Company will not oppose the expropriation proceedings in connection with the Hanson Canal property, this office would be disposed to recommend to the Chief of Engineers that regulations substantially as proposed in the accompanying draft be agreed upon in advance, to take effect on the date that the United States obtains possession of the property.

Very truly yours,

(Signed) E. J. DENT.

E. J. DENT,

Major, Corps of Engineers.

Motion and Order to Transmit Certain Documents in the Original.

Filed November 15, 1920.

United States District Court, Eastern District of Louisiana.

No. 16242.

UNITED STATES OF AMERICA

vs.

ALBERT HANSON LUMBER COMPANY, LIMITED, et al.

To the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana, New Orleans Division:

On joint motion of Emmet Alpha and E. Howard McCaleb, Counsel for the defendant, Albert Hanson Lumber Company, Limited, and of Henry Mooney, United States District Attorney, and J. D. Dressner, Special Counsel for the plaintiff, United States of America, and on suggesting to the Court that the following original
291 papers and documents in this cause offered, introduced and filed in evidence in this cause, and forming part of the transcript on writ of error from the United States Circuit Court of Appeals cannot be conveniently copied by the Clerk into the transcript and that the same should be transported and sent up to the United States Circuit Court of Appeals in their original shape in order that the said United States Circuit Court of Appeals will receive and consider such original papers in connection with the transcript of the proceedings in accordance with paragraph four of rule XIV of the Rules of the United States Circuit Court of Appeals, to-wit:

1. Exhibit "3," referred to in the petition of the United States f America;

2. Exhibit "2," referred to in the petition of the United States of merica;

3. House Document No. 610, House of Representatives, 63rd ongress, second session being letter from Secretary of War transmitting report of Chief Engineer relative to Intercoastal Waterway, nd referred to in Act of Congress of July 25th, 1912, page 16 of aid report, paragraph 19, and the remaining portion of paragraph 19, on page 17, and pages 42 and 45 down to the paragraph on page 17.

4. House Document No. 640, 59 Congress 2nd Session referred to in Act of March 2nd, 1907;

292 5. Charter Albert Hanson Lumber Co.

6. Map or diagram of Hanson Canal offered and filed in connection with testimony of Walter Y. Kempner.

And on further suggesting that the parties hereto have stipulated with respect to said documents forming part of the transcript, in their original form and to be received and considered in connection with the transcript of the proceedings.

It is ordered, that the foregoing documents, maps and diagrams and exhibits be transported along with and forming part of the transcript and sent up to the United States Circuit Court of Appeals as part of said transcript, all in accordance with paragraph four of Rule XIV of the Rules of the United States Circuit Court of Appeals.

(Signed) RUFUS E. FOSTER,
Judge.

O. K.

(Signed) HENRY MOONEY,
U. S. Atty.

November 15, 1920.

293 *Stipulation of Counsel to Transmit Certain Documents in the Originals.*

Filed November 15, 1920.

No. 16242.

UNITED STATES

vs.

ALBERT HANSON LUMBER CO., LTD.

Documents to be sent up in the originals:

1. Exhibit "3," referred to in the petition of the United States of America;

2. Exhibit "2," referred to in the petition of the United State America;

3. House document No. 610, House of Representatives, 63 Congress, second session being letter from Secretary of War tra mitting report of Chief Engineer relative to Intercoastal Waterw and referred to in Act of Congress of July 25th, 1912, page 16 said report, paragraph 19, and the remaining portion of paragra 19, on page 17, and pages 42 and 45 down to the paragraph page 17.

4. House document No. 640, 59 Congress 2nd Session referred in Act of March 2nd, 1907.

5. Charter Albert Hanson Lumber Co.

6. Map or diagram of Hanson Canal offered and filed in conn tion with testimony of Walter Y. Kempner.

294 It is hereby stipulated between the undersigned Coun for the respective parties that the foregoing documents, ma diagram and exhibits be included in the transcript on writ of er herein without the necessity of copying the same at large in t transcript of the proceedings, and to be received and considered the Appellate Court in the same manner and to the same effect if said documents, maps and diagrams were actually copied in s transcript.

(Signed) E. HOWARD McCALEB,
Counsel Albert Hanson Lumber Co., Ltd.
(Signed) HENRY MOONEY,
(Signed) J. D. DRESNER,
Counsel United States of America.

11/15/20.

Præcipe for Transcript.

Filed November 15, 1920.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

No. 16242.

UNITED STATES OF AMERICA
VS.
ALBERT HANSON LUMBER CO., LTD.

Mr. H. J. Carter,
Clerk U. S. District Court,
New Orleans, La.

DEAR SIR:

In making up the transcript of record on the writ of error sued o by the Albert Hanson Lumber Co. Ltd., you will please inclu therein the following, to wit:

295 1. Petition and order (excluding the exhibit attached);

2. Exception filed June 29, 1920;

3. Exception filed July 10, 1920;

4. Hearing of exceptions and order over-ruling same;

5. Motion to strike out and order denying same;

6. Answer of Albert Hanson Lumber Co. Ltd.,

7. Case called, jury empaneled, hearing in part and continuance;

8. Further hearing and continuance;

9. Further hearing and verdict;

10. Order allowing motion for new trial to be filed and fixed for August 7, 1920;

11. Motion for new trial;

12. Order over-ruling motion for new trial;

13. Order allowing def't to Nov. 13, 1920, to file Bills of Exceptions;

14. Judgment;

15. Petition for writ of error and order allowing same;

296 16. Assignment of errors;

17. Supersedeas bond for $10,000.00;

18. Testimony, notes of evidence and stenographer's report filed;

19. Bills of Exception;

20. Entire charge of Court to the Jury.

21. Exhibit—Letter from The Assistant Secretary of War dated Washington October 14, 1919, to the Honorable, The Attorney General;

22. Exhibit—Regulations to govern Navigation and the floating of logs and rafts of logs on the intercoastal waterway from Bayou Teche, La., to West Cote Blanche Bay, La.;

23. Exhibit—Letter from Emmet Alpha, dated Franklin, La., April 23, 1920, to Mr. Henry Mooney, United States Attorney, New Orleans, Louisiana;

24. Exhibit—Letter from J. D. Dressner, Special Asst. U. S. Attorney, dated New Orleans, La., May 22nd, 1920, to Emmet Alpha, Esq., Attorney at Law, Franklin, La.,

25. Exhibit—Letter from E. J. Dent, Major, Corps of Engineers, dated New Orleans, La., June 3, 1920, *at* Mr. Emmet Alpha, Franklin, Louisiana;

26. House Document No. 610, House of Representatives, 63rd Congress, second session, being letter from Secretary of War transmitting report of Chief Engineer relative to Intercoastal
297 Waterway, and referred to in Act of Congress of July 25th, 1912, particularly page 16 of said report, paragraph 19, and the remaining portion of paragraph 19, on page 17, and pages 42 and 45 down to the paragraph on page 46;

27. House Document No. 640, 59 Congress 2nd session referred to in Act of March 2nd, 1907.

28. Charter Albert Hanson Lumber Co.

29. Map or diagram of Hanson Canal offered and filed in evidence in connection with testimony of Walter Y. Kempner.

30. Motion and order respecting transfer of documents in original.

31. Stipulation of Counsel.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Att'ys for Albert Hanson Lumber Co. Ltd.

298 Clerk's Office.

I, H. J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 306 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors and proceedings in the case of the "United States of America versus Albert Hanson Lumber Company, Limited, et al.," No. 16,242 of the Docket of said Court (made up in accordance with the præcipe for transcript copied herein).

Witness my hand, and the seal of the said Court, at New Orleans, La., on this 1 day of December A. D. 1920.

[SEAL.] H. J. CARTER,
Clerk.

Citation and Writ of Error, omitted from the printed record, the Originals thereof being on file.

* * * * * * *

299 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of March 8th, 1921.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LIMITED,

versus

THE UNITED STATES OF AMERICA.

On this day this cause was called, and, after argument by E. ward McCaleb, Esq., for plaintiff in error, and Henry Mooney, q., United States Attorney, and Jacob D. Dresner, Esq., Special torney, and Jacob D. Dresner, Special Asst. to U. S. Attorney, omitted to the Court.

0 *Opinion of the Court.*

Filed March 29th, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3644.

LBERT HANSON LUMBER COMPANY, LIMITED, Plaintiff in Error,

versus

THE UNITED STATES OF AMERICA, Defendant in Error.

ror to the District Court of the United States for the Eastern District of Louisiana.

Emmet Alpha and E. Howard McCaleb for Plaintiff in Error.
Henry Mooney, United States Attorney, (Henry Mooney, U. S. ttorney, and Jacob D. Dresner, Sepecial Asst. to U. S. Attorney, the brief), for Defendant in Error.

Before Walker, Bryan, and King, Circuit Judges.

ALKER, *Circuit Judge:*

The judgment presented for review is one condemning a described rip of land 300 feet in width, which includes a waterway known as e Hanson Canal, in a suit or proceeding instituted by the District ttorney in the name of the United States, the defendant in error. principal controversy in the case is as to the existence of the as- rted right of the Government to acquire the property mentioned by condemnation. In behalf of the Government it was con- 01 tended that the right to acquire the property in the manner adopted exists by virtue of the following statute:

"The Secretary of War may cause proceedings to be instituted, in the name of the United States, in any Court having jurisdiction of said proceedings, for the acquirement by condemnation of any land, right of way or material needed, to enable him to maintain, operate or prosecute works for the improvement of rivers and harbors, for which provision has been made by law. Such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted. Provided, however, that when the owner of such land, right of way or material shall fix a price for the same which, in the opinion of the Secretary of War, shall be reasonable, he may purchase the same at such price without further delay; and provided further, that the Secretary of War is hereby authorized to accept donations of lands or material required for the maintenance or prosecution of such works." 25 Stat. 94; U. S. Compiled Statutes Annotated, §9878.

To say the least, it is questionable whether, if facts hereinafter stated were not controlling in determining the conclusion to be reached, the right to condemn the property in question properly could be regarded as given by the above set out statute, which authorizes the Secretary of War to cause proceedings to be instituted "for the acquirement by condemnation of any land, right of way or material needed, to enable him to maintain, operate or prosecute works for the improvement of rivers and harbors, for which provision has been made by law." The expressed purpose of the authority conferred on the Secretary of War by that statute is "to enable him to maintain, operate or prosecute works for the improvement of rivers and harbors, for which provision has been made by law." Legislation referred to below makes it plain that the only authorized
302 acquisition of the Hanson Canal was "for use as a part of" an intracoastal waterway, links in which consisted of sundry canals or channels connecting other navigable waters. It was in contemplation to make the Hanson Canal one of the links in that waterway. It seems that the acquirement of that canal for such a purpose could not properly be regarded as the acquirement of land, right of way or material needed, to enable the Secretary of War to maintain, operate or prosecute works for the improvement of rivers or harbors. The purpose of the contemplated acquisition being for use of the property in question as a part of a waterway which is other than a river or harbor, it cannot well be said that the acquiring of it would be to enable the Secretary of War to maintain, operate or prosecute works for the improvement of rivers and harbors, within the meaning of the above set out provision.

But, even if that statute would, under other circumstances, authorize the condemnation of the property in question, the terms and history of the legislation dealing specifically with the subject of extending the public intra-coastal waterway by adding to it a link connecting the waters which are connected by the Hanson Canal we think are such as to show that authority to acquire the property in question by condemnation does not exist. The Hanson Canal

extends from Bayou Teche on the east to Bayou Portage on the west. The Act of March 2, 1907, entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," made an appropriation of the sum and for the purpose shown by the following provision of it:

303 "Improving inland waterway channel from Franklin to Mermentau, La., in accordance with the report submitted in House Document No. 640, 59th Congress, Second Session, $89,292; and the Secretary of War may enter into a contract or contracts for such material and works as may be necessary to complete said project, to be paid for as appropriations may from time to time be made by law, not to exceed $200,000 in excess of the amount therein appropriated." 34 Stat. 1073, 1089.

The similarly entitled Act of March 3, 1909, contained the following provision:

"Inland waterway between Franklin and Mermentau, La. To secure a suitable right of way for the proposed inland waterway channel from Franklin to Mermentau, adopted by Congress in the Rivers and Harbor Act of March 2, 1907, the location of the eastern terminus of said channel may be changed from the town of Franklin, on Bayou Teche, to such other point on said bayou as the Secretary of War may select; provided, that the modification herein authorized shall not be made unless a valid title of the necessary right of way be secured to the United States, free of cost." 35 Stat. 815, 816.

The similarly entitled Act of February 27, 1911, contained the following provision:

"In land waterway between Franklin and Mermentau, Louisiana: To insure the selection of the most suitable route for the inland waterway channel from Franklin to Mermentau adopted by Congress in the river and harbor act of March second, nineteen hundred and seven, the Secretary of War is hereby authorized, on the recommendation of the Chief of Engineers, to make such changes in the location of said channel as may be considered desirable: Provided, That no change shall be made under this authorization unless the necessary right of way is secured to the United States free of cost." U. S. Stat. 933, 942.

The similarly entitled Act of July 25, 1912, made an appropriation of the sum and for the purpose shown by the following provision:

"Improving Waterway from Franklin to Mermentau. The Secretary of War is hereby authorized to purchase, for use as part of said waterway, the so-called Hanson Canal, in accordance with the recommendation made by the Chief Engineer at a cost not to exceed $65,000.00 to be paid out of funds heretofore appropriated for this project." 37 Stat. 201, 212.

304 During the time intervening between the date of the Act of March 19, 1907, and that of the Act of July 25, 1912, the project of connecting Bayou Teche with a waterway to the west remained unexecuted. It is to be noted that the Act of March 3, 1909, authorized a change of the eastern terminus of the proposed channel from the town of Franklin, on Bayou Teche, to such other point on that Bayou as the Secretary of War might select, and provided that the authorized modification should "not be made unless a valid title of the necessary right of way be secured to the United States, free of cost"; and that changes of location were authorized by the Act of February 27, 1911, subject to a similar proviso requiring the right of way to be secured to the United States free of cost. The selection of the Hanson Canal route constituted a change of the eastern terminus of the proposed channel from the town of Franklin, on Bayou Teche, the Hanson Canal being several miles from Franklin. A result of the legislation on the subject was that authority to select the Hanson Canal route was first given subject to the proviso that the necessary right of way be secured to the United States free of cost, and afterwards the Secretary of War was authorized "to purchase, for use as part of said waterway, the so-called Hanson Canal * * * at a cost not to exceed $65,000.00, to be paid out of funds heretofore appropriated for this project."

The above quoted statutes show that the manner of acquiring property needed for the authorized project was specifically prescribed.

305 Prior to the Act of July 25, 1912, the authority to acquire was given subject to the condition that title be secured to the United States free of cost. That Act authorized the acquisition of the Hanson Canal only by purchase at a cost not to exceed the stated sum. It is not to be supposed that Congress would have so specifically prescribed the manner or method of acquisition if it had intended to confer authority to acquire the needed property in a different way. The several statutes on the subject of the projected connecting waterway, when considered in their relation to each other, persuasively indicate the absence of an intention to authorize the acquisition of needed property by condemnation. It may be inferred that a purchase of the Hanson Canal at a stated price was authorized after it had become apparent that the property needed for the project probably could not be procured without cost to the United States. At the time the proceedings were instituted authority had not been conferred to acquire the Hanson Canal otherwise than without cost to the United States or by purchase at a stated price. The word "purchase," used as it was in the Act of July 25, 1912, means an acquisition from the owner by his voluntary act, for an agreed valuable consideration. The language of that Act shows that compulsory proceedings were not contemplated. The right to exercise the power of eminent domain does not exist where, instead of it being given in express terms or by necessary implication, the only authority to acquire which is conferred is required to be exercised either by a purchase or without cost to the party acquiring. Kohl v. United States, 91 U. S. 367; Western Union Telegraph Co.,

v. Pennsylvania R. R., et al., 195 U. S. 540, 569. By enumerating other methods required to be followed, acquisition by the com-
306 pulsory method of condemnation was excluded. The court erred in ruling otherwise. Because of that error, the judgment is

Reversed.

(Original filed March 29th, 1921.)

Judgment.

Extract from the Minutes of March 29th, 1921.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LIMITED,

versus

THE UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause, be, and the same is hereby, reversed.

307 *Petition for Rehearing.*

Filed May 6th, 1921.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LTD., Plaintiff in Error,

versus

THE UNITED STATES OF AMERICA, Defendant in Error.

Petition for Rehearing of the United States of America.

The petition of the United States of America with respect represents:

I.

That the Court having found that the Act of April 24, 1888, Chap. 194, 25 Stat. 94; U. S. Comp. 9878, does not authorize the acquisition of this property by the Government, by condemnation,

inasmuch as Congress had specifically provided for the acquisitio
of this property by purchase, a rehearing should be granted here
in order that petitioner may present to the Court for its co
308 sideration, the Act of August 1, 1888, c. 728, 25 Stat. 357,
S. Comp. 6909, to which your Honors were not heretofo
referred and which reads as follows:

"U. S. Comp. 6909. (Act Aug. 1, 1888, c. 728, No. 1.) Co
demnation of building sites; jurisdiction of Courts.

"In every case in which the Secretary of the Treasury or an
other officer of the government has been, or hereafter shall b
authorized to procure real estate for the erection of a public buildin
or for other public uses he shall be, and hereby is, authorized
acquire the same for the United States by condemnation und
judicial process, whenever in his opinion it is necessary
advantageous to the government to do so. And the United Stat
Circuit or District Courts of the district wherein such estate
located, shall have jurisdiction of proceedings for such condemnatio
and it shall be the duty of the Attorney General of the United State
upon every application of the Secretary of the Treasury, under th
act, or such other officer, to cause proceedings to be commenced f
condemnation, within thirty days from the receipt of the applicatio
at the Department of Justice." (25 Stat. 357.)

Section 3736, R. S., reads:

"No lands shall be purchased on account of the United States e
cept under a law authorizing such purchase."

Because of this statute an appropriation cannot be utilized for th
purchase of lands unless direct authority therefor can be shown
One of the purposes of the Act of April 24, 1888, was
309 supply requisite authority for acquisition of land in any ca
thereafter where appropriations were made for purposes d
fined in the act. Another purpose was to authorize condemnation i
cases where purchase was impracticable.

The attention of the court is directed to the fact that the afor
mentioned act of August 1, 1888, does not supply authority for th
acquisition of real estate, but its purpose was,

(*a*) To authorize judicial condemnation thereafter in every ca
where an official might be authorized to procure real estate for publi
uses; and

(*b*) To invest the federal courts with jurisdiction.

The Court will further find that the Act of April 24, 1888, an
the act of August 18, 1890, (26 Stat. 316, U. S. Comp. 6911), a
in practically identical language. Construing the latter act, it ha
been expressly held that it must be read in pari materia with th
act of August 1, 1888. It follows that the Act of April 24, 188
must be read in pari materia with the Act of August 1, 1888. Th

Government may proceed and does proceed under the authority of both statutes in the proper case.

Chappel v. United States, 81 Fed. 764.
Cf. United States v. Lands in Narragansett, 145 Fed. 654.
United States v. Lands in Newcastle, 165 Fed. 783.

Act of July 25, 1912, C. 253, 37 Stat. 201, 212, reads:

"Improving waterway from Franklin to Mermenteau, La., the Secretary of War is hereby authorized to purchase for use
310 as a part of said waterway, the so-called Hanson canal, in accordance with the recommendation made by the Chief of Engineers, at a cost not to exceed $65,000.00; to be paid out of funds heretofore appropriated for this project."

Being thus empowered to purchase, under the Act of August 1, 1888, (supra), the Secretary of War is authorized to condemn the property if and when unable to acquire it by amicable purchase.

II.

While the principle that the power to purchase does not include the power to condemn may be generally true, it is not applicable to the case at bar because by the Act of August 1st, 1888, (supra), power to condemn is expressly conferred in every case where purchase has been authorized and purchase is impracticable; and there is nothing in the legislation in regard to this canal which compels the inference that the general power of condemnation under the Act of August 1st, 1888, was meant to be suspended in this instance.

In United States v. Beatty, (198 Fed. 284), construing an appropriation "for the purchase of land" only (there was no reference to condemnation in the text of the act), it was said:

"1. As briefly as possible I shall dispose of the contention founded on the use of the word 'purchase' in the appropriation act of 1911. When used in a statute, the word 'purchase' is frequently held to include any method of acquisition other than by descent.
311 7 Words and Phrases, 5853. To construe the word here to mean only acquisition by buying, we must assume that Congress had in mind the method of acquisition rather than the general purpose to acquire. The mere use of the word 'purchase'—which may have been used in its technical sense—is not to my mind a sufficient reason for such assumption. If, as we must, we give the members of Congress credit for a reasonable knowledge of human nature, they must be assumed to have known that to restrict acquirement to voluntary sales by the owners would most probably defeat the chief purpose for which the appropriation was made. However, it seems to me that the first section of the act of 1888, supra, makes further discussion unnecessary. The very purpose of that section was to authorize condemnation whenever, theretofore or thereafter, an act of Congress authorized land to be 'procured' for

public use. Surely no broader word than 'procure' could have been used." (286-7.)

The Court was not overruled on this point in 203 Fed. 620.

United States v. Graham & Irvine, (250 Fed. 499), was a case involving condemnation under the Weeks' Forestry Law, the text of which also contains no reference to condemnation. It was held, nevertheless, that condemnation was open when purchase was impracticable.

Cf. Chappel v. United States, 160 U. S. 509, 511; citing, Chappel v. United States, 81 Fed. 764, 765-6.

Kohl v. United States, 91 U. S. 367, was decided before the passage of the Act of August 1, 1888.

312 Wherefore, petitioner prays that a rehearing be granted petitioner and that upon said rehearing the judgment herein rendered by this Honorable Court be annulled and reversed, and that the judgment of the trial court be reinstated and affirmed.

Respectfully submitted,

J. D. DRESNER,
Special Asst. to U. S. Attorney, Eastern District of Louisiana;
HENRY MOONEY,
U. S. Attorney,
Attorneys for Petitioner.

Certificate.

I, the undersigned counsel, of record for petitioner herein, hereby certify that the foregoing petition for rehearing on behalf of the United States of America, is made in good faith and not for the purpose of delay.

J. D. DRESNER.

313 *Order Granting Rehearing.*

Extract from the Minutes of July 27th, 1921.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LIMITED,

versus

THE UNITED STATES OF AMERICA.

It is ordered by the Court that the petition for rehearing, filed in this cause, be, and the same is hereby, granted;

It is further ordered that the judgment or decree of this Court in this cause be vacated; that the opinion rendered herein be recalled; and that this cause be assigned for rehearing during the next term of Court at New Orleans.

314 *Opinion of the Court.*

Filed January 21st, 1922.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LIMITED, Plaintiff in Error,

versus

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Eastern District of Louisiana.

E. Howard McCaleb, and Emmett Alpha, for Plaintiff in Error.
Louis H. Burns, United States Attorney, contra.

Before Walker, Bryan, and King, Circuit Judges.

KING, *Circuit Judge:*

A proceeding was instituted in the name of the United States of America against Albert Hanson Lumber Company, Limited, in the United States District Court for the Eastern District of Louisiana to condemn a described strip of land 300 feet wide which embraced a waterway known as the Hanson Canal. It resulted in a verdict and judgment condemning said property and fixing its value at $65,000.00.

The Lumber Company brings error attacking said proceeding on several grounds, but mainly on the ground that no authority
315 of law has been granted for maintaining a proceeding to condemn this piece of property.

This property is sought to be taken for use as a part of an intracoastal waterway which is being developed along the coast of the Gulf of Mexico. The Hanson Canal extends from Bayou Teche on the east to Bayou Portage on the west. By an Act of Congress approved March 2, 1907, entitled "An Act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors and for other purposes" the Secretary of War was authorized to contract for such material and works as may be necessary to improve an inland waterway channel from Franklin to Mermentau, Louisiana, to an amount therein stated.

By two similarly entitled Acts passed respectively in 1909 and 1911, changes of the route of such waterway were authorized, each act providing that no change of route should be made "unless the necessary right of way is secured to the United States free of cost."

A report of Engineers was made which recommended a change of route which would require the use of the Hanson Canal. Thereafter

a similarly entitled Act was approved on July 25, 1912, making an appropriation of the sum, and for the purpose shown, by the following provision:

"Improving Waterway from Franklin to Mermentau.—The Secretary of War is hereby authorized to purchase, for use as part of said waterway, the so-called Hanson Canal, in accordance with the recommendation made by the Chief Engineer at a cost not to exceed $65,000, to be paid out of funds heretofore appropriated for this project." 37 Stat. 201, 212.

The legislative history above recited makes it evident that when the developments of this waterway were begun the Govern-
316 ment did not propose to expend any money for the acquisition of rights of way; but that unless the right of way was donated, free of cost, the work of construction and development of said intracoastal waterway would not proceed.

However, in 1912, for reasons satisfactory to it, this purpose and policy of the Government, as to the link in said waterway to be constructed by the use of the Hanson Canal, is entirely changed and express authority is conferred to purchase said property known as the Hanson Canal for a sum not to exceed $65,000.

It is insisted that the Act of 1912, confines the power of the Secretary of War to acquiring this property, solely by agreement and contract of sale, and that it operates to withdraw from him all other power with which he may have been vested to acquire this property by condemnation proceedings.

The question therefore is, does such grant of power confine the method of purchase solely to voluntary bargain and sale or does it leave unaffected the general grant of power conferred on any officer charged with procuring property for a public use to acquire it by exercising the right of condemnation?

The Act of August, 1888, c. 728, 25 Stat. 357, (U. S. Comp. St. Sec. 6909), provides:

"In every case in which the Secretary of the Treasury or any other officer of the government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be, and hereby is, authorized to acquire the same for the United States by condemnation under judicial process, whenever in his opinion it is necessary or advantageous to the government to do so. And the United States Circuit or District Courts of the district wherein such real estate is located, shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney General of the United States, upon every ap-
317 plication of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the Department of Justice."

With this Statute of force the Congress specifically authorized the Secretary of War to purchase for a public use this property known as the Hanson Canal at a cost not to exceed $65,000.

It knew that under the Act of August 1, 1888, it had conferred on any public officer, authorized to procure real estate for any public use, authority to acquire the same for the United States by condemnation, whenever, in his opinion, it was necessary or advantageous to the government to do so.

The legislative branch had determined that this property was needed for this public use and authorized its acquisition. It did not negative the power existing to the officer, authorized to purchase it, to condemn if he thought it advantageous to do so.

The question in this case is not whether in the absence of a statute conferring any power on a public officer to initiate condemnation proceedings the giving of authority to purchase certain real estate for public uses would confer authority upon him to acquire the same by condemnation, if he was unable to acquire it by contract, but whether, where an officer who has general authority under a statute, when he may be authorized to acquire real estate for public uses, to institute condemnation proceedings whenever he considers such course necessary or advantageous, is deprived by implication of such authority, where he is authorized to purchase certain real estate for a public use at not exceeding a given price.

318 Repeals by implication are not favored. United States v. Greathouse, 166 U. S. 601, 605.

The true rule is to construe the statutes together, and that the giving of authority to purchase the real estate, there being no expression of purpose to withdraw, or limit, the existing power to resort to condemnation, left it within the power of the officer authorized to purchase, to resort to condemnation if he deemed it necessary or advantageous.

We therefore conclude that the proceeding to condemn was authorized by law, and the judgment therein is valid.

Nor do we think that the power conferred by the Act of August 1, 1888, would not confer power to condemn property required for the public use here designated. The grant of power is to any public officer authorized to procure real estate. Many acquisitions may be authorized for public purposes other than building sites and to be made by public officers in no way connected with the erection of structures.

It is not probable that Congress in extending this authority to all public officers should have used the words "other public uses" in a less extended sense.

The Act has been recognized as extending to many uses. Chappell v. United States, 160 U. S. 499, 500; United States v. Beaty, 198 Fed. 198; United States v. Gettysburg Electric Ry. 160 U. S. 668, 670.

The contention of plaintiff in error that the Act of 1912 undertakes to value such property so as to invade the judicial power can not be sustained.

It is true that it apppropriates only a certain sum which the Secretary can expend without further appropriation. But as the

319 Court properly charged the jury this did not fix the value of the property sought to be condemned, and that they should find a greater or less sum as the evidence might satisfy them as to the value.

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Upon this point the Supreme Court of the United States ha

"The validity of the law is further challenged because the gate amount to be expended in the purchase of land for the p limited to the amount of $1,200,000. It is said that this is equi to condemning the lands and fixing their value by arbitrary ment. But a glance at the act shows that the property holde not affected by the limitation. The value of the lands is to be upon, or in the absence of agreement, is to be found by appra be appointed by the court. The intention expressed by Co not to go beyond a certain aggregate expenditure, cannot be d a direction to the appraisers to keep within any given limit in ing any particular piece of property. It is not unusual for Co in making appropriations for the erection of public buildings, i ing the purchase of sites, to name a sum beyond which expen shall not be made, but nobody ever thought that such a limi had anything to do with what the owners of property should a right to receive in case proceedings to condemn had to be re to." Shoemaker v. United States, 147 U. S. 282, 302.

The charge of the Court properly submitted to the jury the f of the value of the property and there was evidence to suppo finding.

The judgment of the District Court is affirmed.

(Original filed January 21st, 1922.)

320 *Judgment.*

Extract from the Minutes of January 21st, 1922.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LIMITED,

versus

THE UNITED STATES OF AMER.CA.

This cause came on to be heard on the transcript of the from the District Court of the United States for the Eastern D of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adj by this Court. that the judgment of the said District Court i cause, be, and the same is hereby, affirmed.

321 *Petition for Rehearing.*

Filed February 9, 1922.

In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LTD., Plaintiff in Error,

versus

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Eastern District of Louisiana.

Petition for Rehearing of Albert Hanson Lumber Company, Plaintiff in Error.

The petition of the Albert Hanson Lumber Company, Ltd., plaintiff in error, with respect, represents:

That in the opinion and decree herein rendered on the 21st day of January, 1922, affirming the judgment of the District Court of the United States, the Court erred:

322 1. In holding the Acts of 1907, 1909, 1911, 1912, read in connection with Act August 1st, 1888, authorized condemnation of lands belonging to plaintiff in error, exclusive of the Hanson Canal proper.

The opinion concedes that legislation prior to Act of 1912 enjoined condemnation of land by necessary implication, but that this purpose or policy was changed by Act of 1912 in respect to the Hanson Canal. This error lies not only with respect to the Canal, but in extending the asserted change of purpose and policy to land or rights of way (300 ft. wide by 4 miles long or so much of it) outside the limits of the Canal. Congress exhibited no such change of purpose or policy and the Court ought not. For Act 1907 appropriated a fixed sum for material and works by contract; Acts 1909, 1911 prescribed a voluntary conveyance or donation of lands for constructing said works carried over to the change of route; Congress then, finding a suitable ditch or Canal located on the changed route, applied a fixed sum for its purchase by contract, payable out of the appropration for material and works.

2. In holding that the necessary implication or intention against condemnation arising out of a special statutory authority (Act of 1912) to acquire by contract of purchase is overthrown by a general statutory authority to condemn where authority is granted to procure, that is to say, a general purpose to acquire (Act August 1, 1888) unless the said special statute expressly negatives or in terms withdraws the general authority to condemn.

323 The admittedly specified method of acquisition by contract of purchase, necessarily implying consent, is clearly an expression of purpose to withdraw or limit any general authority to condemn, which implies non-consent. Raleigh v. Reid, 13 Wall. 210; Wells v. Potontococ, 102 U. S. 632.

3. In holding that Act of 1912 and Act August 1, 1888, are reconcilable.

Act of 1912 requires consent to effectuate its purpose viz: by contract of purchase. It contains no expression of a general purpose to acquire, that is to say, procure, which would include non-consent. Act August 1, 1888, requires non-consent to effectuate its purpose. Both acts are manifestly and absolutely inconsistent with each other.

4. In holding that Act August 1st, 1888, applies to special statutes such as the Act of 1909, 1911, 1912, prescribing a particular method of acquisition as distinguished from statutes prescribing any or all methods, that is to say, indicating a general purpose to acquire or procure.

This error has been pointed out in the briefs. For act of 1912 mandatorily stipulates the condition of price, as a limitation upon the Secretary's authority, to contract for the particular works (Hanson Canal), such condition or limitation stripping him of exercising any discretion which he might otherwise have had under a general power to procure. This condition is a legislative expression of purpose to withdraw or limit any existing discretionary power to
324 resort to condemnation, and besides is manifestly inconsistent with any judicial investigation or determination of value, the base upon which the exercise of the right to condemn rests. The unconstitutionality of the acts of 1907, 1909, 1911 and 1912, resulting from reading act August 1, 1888, into them, as fully discussed in the briefs, sufficiently exposes the repugnancy between them, and so the familiar rule applied in St. Louis v. Arkansas, 235 U. S. 350, should have been adhered to.

5. In holding that the later and special statute (Act of 1912) did not operate as an exception to the prior and general statute (Act August 1, 1888), and in failing to hold that it did.

This error is exposed in United States v. Matthews, 173 U. S. 381, 387, where it was held that an appropriation act which is a special and later enactment, operates to engraft an exception upon a prior and general statute which might otherwise prove controlling. See also Walla Walla v. Walla Walla Water Co., 172 U. S. 1, 22; Jackson v. Chicago. 102 C. C. A. 159, 161; Townsend v. Little, 109 U. S. 504, 512; Kepner v. United States, 195 U. S. 100, 125; United States v. Utah Power & Light Co., 126 C. C. A. 376, 382, 209 Fed. 560.

6. In construing and applying Act August 1, 1888, to special statutes (Acts of 1907, 1909, 1911, 1912) for the *the* construction or acquisition of works for the improvement of rivers and harbors.

325 As Act April 24, 1888, has for its object "to facilitate the prosecution of works projected for the improvement of rivers and harbors", and as the special statutes (Acts 1907, 1909, 1911, 1912) included in the River & Harbor Appropriation Acts have for their object the projection of the Intracoastal Waterway, connecting and improving rivers from and including the Teche to and including the Mermentau, and as the River and Harbor Act of 1912 provides for the purchase by contract of the Hanson Canal "for use as part of said waterway", the mind of Congress could only have been directed to Act of April 24, 1888; and as the Act of August 1, 1888, had for its object as expressed in its title, to authorize the condemnation of land for sites of public buildings, such classification and segregation of public uses places the special legislation in the category of the Act of April 24th, 1888, relative to the condemnation of lands for the maintenance, operation or prosecution of works for the improvement of rivers and harbors. It was error to bring this case into a class of public uses (Act August 1st, 1888,) having no relation to river improvement. This error is emphasized by the application of the rule of ejusdem generis to the provisions of Act August 1, 1888, first clause, discussed in the brief, to the effect that that Act has no relation to condemnation of lands required for river and harbor improvement. Hence, Act April 24, 1888, is the only rule that governs in the exercise of the authority to condemn land or works "for use as a part of said waterway", connecting and improving rivers from and including the Teche to the Mermentau,

326 and as that Act (April 24, 1888,) and the Acts of 1907, 1909, 1911, 1912, expressly negative condemnation of the 300-foot strip, as also the Hanson Canal, such negation is not overthrown by applying the Act of August 1, 1888, relating to a different subject matter, and having a different object.

7. In holding that the public use in Acts 1907, 1909, 1911, 1912, being uses connected with river and harbor improvement is covered by the public use designated in Act August 1, 1888.

This error is exposed (1) by applying the rule of ejusdem generis to the provisions of Act of August 1, 1888, (2) by referring to the title to determine the meaning of general words "other public uses" used in the body of the act, which title reads: "An Act to authorize the condemnation of lands for sites of public buildings and for other purposes," (Holy Trinity Church vs. United States, 142 U. S. 457, 36 L. Ed. 226); (3) because of Act of April 24, 1888, establishing the rule for the exercise of the right of condemnation in matters of river improvement, each and all, rejects the application of the Acts of August 1, 1888, to the public use designated in the special legislation in suit.

8. In holding that by application of Act August 1, 1888, the Act of 1912 did not undertake to value the Hanson Canal so as to invade the judicial power.

In support of this error the Court relies on Shoemaker v. United States, 147 U. S. 282, 312. The distinction between Monon-
327 gahela Nav. Co. v. U. S. 148 U. S 327, and kindred decisions cited in the brief (under which the statutes in this case falls), and the Shoemaker case, is clear. The distinction appears in the Shoemaker case quoted in the opinion, and to the effect, that the fixing of the appropriation for the aggregate payment for separate and several tracts to several different owners "cannot be deemed a direction to the appraisers to keep within any given limit in valuing any particular piece of property". The negation, therefore, was with regard to the absence of a price limit "upon any particular piece of property". But here we have one solitary thing, one particular piece of property, one inseparable territorial entity with one price limitation, and one or joint ownership. The unconstitutionality of Act of 1912, that would result by applying it to Act August 1, 1888, or vice versa, discloses such a repugnancy as to operate either a repeal pro tanto of Act August 1, 1888, or that the latter Act has no application, or that Act of 1912 is an exception, and in this wise, it was the duty of the Court to so construe and apply them by adhering to the rule reiterated in St. Louis v. Arkansas 235, U. S. 350.

9. In holding that the District Judge properly submitted to the jury the finding of the value of the property, and in holding there was evidence to support the finding; and in failing and refusing to pass on and sustain Bills of Exception Nos. 2, 3 and 6, and Assignments of Error Nos. 1, 4, 5, 9, 10. These errors are pointed out in the original brief.

328 Wherefore, petitioner prays that a rehearing be granted petitioner, and that upon said rehearing the judgment herein rendered by this Honorable Court, be annulled, and that the judgment of the Trial Court be reversed and set aside.

Respectfully submitted,

(Signed) E. HOWARD McCALEB,
(Signed) EMMET ALPHA,
Attorneys for Petitioner.

Certificate.

I, the undersigned counsel of record for petitioner herein, hereby certify that the foregoing petition for rehearing on behalf of the Albert Hanson Lumber Company, Ltd., plaintiff in error, is made in good faith and not for the purposes of delay.

(Signed) E HOWARD McCALEB.

329 *Order Denying Rehearing.*

Extract from the Minutes of February 14th, 1922.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LIMITED,

versus

THE UNITED STATES OF AMERICA.

It is ordered by the Court that the petition for rehearing filed in this cause, be, and the same is hereby, denied.

Petition for Writ of Error and Order Allowing Same.

Filed February 15, 1922.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LIMITED, Plaintiff in Error,

versus

UNITED STATES OF AMERICA, Defendant in Error.

Petition for Writ of Error from the Supreme Court of the United States to the United States Circuit Court of Appeals, 5th Circuit.

To the Honorable Circuit Judges of the United States Circuit Court of Appeals, Fifth Circuit:

Your petitioner, Albert Hanson Lumber Company Limited, plaintiff in error in the above entitled cause, respectfully shows: that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit and that a judgment has therein been rendered on the 21st day of January, 1922, affirming a judgment of the District Court of the United States for the Eastern District of Louisiana, and that the matter in controversy in said suit exceeds one thousand dollars, besides costs; that the jurisdic-
330 tion of none of the Courts above mentioned is or was dependent in anywise upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of the different States, and that this cause does not arise under the patent laws, nor the revenue laws, nor the criminal laws, nor the trademark laws, nor the copyright laws, nor the bankruptcy laws, nor the employers' liability laws, nor the Hours of Service laws, nor the Ash pan laws, nor the Safety Appliance laws, nor any of the laws mentioned in the Act of Congress of Sept. 6, 1916, Ch. 448 Sec. 3, 39 Stat. L. 727 amending Sec. 4 of the Act of Jany. 28, 1915, and that this case is not an admiralty case; and that it is a proper case to be

reviewed by the Supreme Court of the United States upon writ of error; and therefore, your petitioner respectfully prays, that a writ of error be allowed it in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, to send the record and proceedings in said cause with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by plaintiff in error may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

(Signed) EMMET ALPHA,
(Signed) E. HOWARD McCALEB,
Attorneys for Albert Hanson Lumber Company, Limited, Plaintiff in Error.

The foregoing petition is granted and writ of error allowed as prayed for upon plaintiff in error, Albert Hanson Lumber Company Limited, giving bond according to law in the sum of Ten Thousand ($10,000.00) Dollars, which shall act as a supersedeas bond.

(Signed) R. W. WALKER,
U. S. Circuit Judge.

February 15, 1922.

331 *Assignment of Errors.*

Filed February 15th, 1922.

The United States Circuit Court of Appeals, Fifth Circuit.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LIMITED, Plaintiff in Error,

versus

UNITED STATES OF AMERICA, Defendant in Error.

Assignment of Errors on Writ of Error from the Supreme Court of the United States to the United States Circuit Court of Appeals, Fifth Circuit.

Now comes the plaintiff in error, Albert Hanson Lumber Company Limited, by Emmet Alpha and E. Howard M'Caleb its attorneys, and says, that in the record and proceedings aforesaid of the United States Circuit Court of Appeals for the Fifth Circuit, in the above entitled cause, and in the rendition of the final judgment therein, manifest error has intervened to the prejudice of the plaintiff in error, in this to wit: The said United States Circuit Court of Appeals erred:

(1) In holding that the Acts of Congress of March 2, 1907, March 3, 1909, February 27, 1911, and July 25, 1912, authorized the condemnation and adverse taking of the lands and property belonging to plaintiff in error, mentioned in the petition of the United States and described in the judgment of the District Court of the United States for the Eastern District of Louisiana.

(2) In holding that said Acts of Congress, or any of them, authorized the condemnation and adverse taking of the Hanson Canal.

(3) In holding that said Acts of Congress, or any of them, authorized the condemnation and adverse taking of the lands of plaintiff in error, situated adjacent to and outside the limits of the Hanson Canal, separately referred to and described in para-
332 graph III of the petition of the United States and in the decree of the District Court of the United States.

(4) In holding that the laws of Congress exhibited authority for the proceedings had in the District Court of the United States and in refusing to hold that said proceedings were and are without authority or warrant of law.

(5) In refusing to sustain the exceptions of no right or cause of action and motion to strike out, filed in the District Court of the United States.

(6) In not sustaining the assignments of error upon the record in said cause.

(7) In entering judgment against plaintiff in error and in affirming the judgment of the District Court of the United States condemning and adjudging to the United States the Hanson Canal and other lands belonging to plaintiff in error adjoining said Hanson Canal for the sum of $65,000.00; and in refusing to reverse and annul said judgment.

(8) In holding that the Judge of the District Court of the United States properly submitted to the Jury the finding of the value of the property sought to be condemned, and in holding there was evidence to support the finding.

(9) In refusing to sustain the objections and bills of exception duly taken by plaintiff in error on the trial of the cause in the District Court of the United States and allowed by the District Judge upon the record in said cause.

Wherefore the said Albert Hanson Lumber Company Limited, plaintiff in error, prays, that for the errors aforesaid and other errors appearing in the record of said United States Circuit Court of Appeals in the above entitled cause to the prejudice of the plaintiff in error, the said judgment of the United States Circuit
333 Court of Appeals, Fifth Circuit, be reversed, annulled and for naught esteemed, and that said cause be remanded to

the United States District Court for the Eastern District of Louisian with instructions to dismiss the petition of the United States o America and rejecting its demand in said cause, and for such furthe proceedings as may be determined upon by the Honorable Suprem Court of the United States to the end that justice may be done i the premises.

(Signed) EMMET ALPHA.
(Signed) E. HOWARD McCALEB,
Attorneys for Plaintiff in Error.

Supersedeas Bond on Writ of Error.

Filed February 15, 1922.

Supersedeas Bond on Writ of Error from the Supreme Court of th United States to the United States Circuit Court of Appeals, Fift Circuit.

Know all men by these presents, that we Albert Hanson Lumbe Company Limited as principal, and Southern Surety Company surety, are held and firmly bound unto the United States of Americ in the full and just sum of Ten Thousand ($10,000) Dollars to b paid to the said United States of America, its certain Attorneys, hein executors, administrators, successors or assigns, to which paymen well and truly to be made, we bind ourselves, our heirs, successor executors and administrators, jointly and severally, by these present Sealed with our seals, and dated this 15th day of February A. D. i the year of our Lord, one thousand nine hundred and twenty tw (1922).

Whereas lately at a session of the United States Circuit Court o Appeals for the Fifth Circuit, in a suit depending in said Cour between Albert Hanson Lumber Company Limited, plaintiff in erro and the United States of America, defendant in error, a judgment wa rendered against the said Albert Hanson Lumber Compan
334 Limited and the said Albert Hanson Lumber Company Lim ited having obtained a writ of error and filed a copy thereof i the Clerk's Office of the said Court to reverse the judgment in th aforesaid suit, and a citation directed to the United States of Americ citing and admonishing it to be and appear at a session of the Su preme Court of the United States to be holden at the City of Wash ington within thirty days from the date thereof.

Now the condition of the above obligation is such, that if the sai Albert Hanson Lumber Company Limited, shall prosecute said wr of error to effect, and answer all damages and costs if it failed t make its plea good, then the above obligation to be void, else to r main in full force and virtue.

(Signed) ALBERT HANSON LUMBER COMPANY, LIMITED,
(Signed) By E. HOWARD McCALEB,
Attorney.
SOUTHERN SURETY COMPANY,
(Signed) By J. BODENHEIM. [SEAL.]

Sealed and delivered in the presence of
(Signed) OAKLEY F. DODD.
(Signed) A. J. PETUS.

Approved.
(Signed) R. W. WALKER,
United States Circuit Judge.

335 House Document No. 640, 59th Congress, Second Session.

Extracts Designated by Præcipes for Transcript.

Pages 1, 2, and 3.

Interior Waterway from the Rio Grande to the Mississippi.

Letter from the Secretary of War Transmitting, with a Letter from the Chief of Engineers, Report of Examination of Project for Interior Waterway from the Rio Grande to the Mississippi.

February 1, 1907.—Referred to the Committee on Rivers and Harbors and ordered to be printed with accompanying illustrations.

War Department,
Sir: Washington, February 1, 1907.

I have the honor to transmit herewith a letter from the Chief of Engineers, United States Army, of 30th ultimo, together with copy of a report from Maj. Edgar Jadwin, Corps of Engineers, on a preliminary examination, with plan and estimate of cost of certain improvements authorized by the river and harbor act approved March 3, 1905, for an inland waterway from the Rio Grande River, Texas, to a connection with the Mississippi River at Donaldsonville, La.

Very respectfully,

WM. H. TAFT,
Secretary of War.

The Speaker of the House of Representatives.

War Department,

Office of the Chief of Engineers.

Washington, January 30, 1907.

Sir:

I have the honor to submit herewith for transmission to Congress report of December 14, 1906, by Maj. Edgar Jadwin, Corps of Engineers, on preliminary examination with plan and estimate of cost of improvement authorized by the river and harbor act approved March 3, 1905, as follows:

Inland waterway from the Rio Grande River, Texas, to a co
tion with the Mississippi River at Donaldsonville, La., said exa
tion to be made in sections, as follows:

First. From the Rio Grande River to Aransas Pass, includi
navigable channel from Corpus Christi through Turtle Co
336 Aransas Pass.

Second. From Aransas Pass to West Galveston Bay channel a
Brazos River, including a channel from Aransas Pass to Vic
on the Guadalupe River, and to Cuero.

Third. From the Brazos River to Sabine Pass.

Fourth. From Sabine Pass to Donaldsonville.

A survey and estimate shall be made of the following portio
the above waterway, to wit: From Aransas Pass, via Turtle
to Corpus Christi and from Aransas Pass to and up the Guad
River to Victoria, and from Victoria to Cuero.

Reports on survey and estimate of cost of those portions o
proposed waterway from Aransas Pass, via Turtle Cove, to C
Christi, and from Aransas Pass to and up the Guadalupe Riv
Victoria, and from Victoria to Cuero were forwarded with my l
of December 20 and 27, 1906, respectively, and are now before
gress. They are printed in House documents Nos. 338 and 33
spectively, Fifty-ninth Congress, second session.

By the wording of the act as quoted the route for the pro
waterway is made to terminate at the eastern end in the Missis
River at Donaldsonville, presumably by connection through B
Lafourche. For the reasons given in his report, Major Jadwi
deemed it best to make the present eastern terminus of the pro
route at Plaquemine, La., making connection between the Missis
and the interior waters of the State by the improvement (now n
completed) of Bayou Plaquemine and its tributaries.

The length of the proposed water route between the Missis
River and the Rio Grande is 690 miles. The plan presented
templates a channel for light-draft navigation with depth of 5
and bottom width of 40 feet. The cost of the necessary work is
mated (in round numbers) at $3,000,000, with $145,000 ann
for maintenance after completion. In the opinion of Major Ja
the construction of this interstate waterway is a work worthy of
undertaken by the United States, excepting that portion bet
Corpus Christi and Point Isabel, Tex., and the connection bet
Donaldsonville and Grand River, La., as noted above. For the
sons given he regards the improvement of the two sections just
tioned as not justified at the present time. The total length o
portions of the route recommended for improvement is 582
and the cost (in round numbers) $2,250,000.

This report has been referred, as required by law, for review
recommendation by the Board of Engineers for Rivers and Ha
and attention is respectfully invited to the Board's report of D
ber 22, 1906, also herewith. For the facts and reasons give

Board recommends for improvement at the present time only those sections of the proposed waterway from Aransas Pass to Pass Cavallo, from Brazos River to Galveston, and from Mermentau River to the Mississippi River (including improvement of Bayou Plaquemine and tributary waters provided for under existing projects). The estimated cost of original work in these sections is (in round numbers) $500,000 and of maintenance $50,000 annually.

I concur in the views of the Board, believing that the
337 improvement of other sections of the route under consideration and obtaining increased channel dimensions for any portions of the route may properly be left for further future consideration. I also concur in the recommendation of the district officer that any appropriations for this waterway be made upon condition that the right of way be furnished free of cost to the United States.

Estimates of cost of contemplated improvements are not ordinarily included in reports on the preliminary examination, but should await orders from the Secretary of War based upon the reports of such examination. In the present case, however, the estimates presented are made from data secured by a previous survey and were prepared without appreciable extra expense. Inasmuch as the matter of cost is the most important factor in determining the advisability of undertaking this improvement, I recommend that the action of Major Jadwin in embodying these estimates in his examination report be approved and that the report be submitted to Congress in its entirety.

Very respectfully,

A. MACKENZIE,
Brig. Gen., Chief of Engineers, U. S. Army.

The Secretary of War.

Pages 4 and 5.

Route.

The route referred to in the act is apparently based in large measure on survey and estimate made under the direction of Maj. C. W. Howell, Corps of Engineers, and published in the Annual Report of the Chief of Engineers for 1875. Special attention is invited to his report and its appendixes. The maps of his survey are understood to be in the United States Engineer office, New Orleans, La. The eastern end of the route suggested as the best by him left the Mississippi River at Donaldsonville, passed along Bayou Lafourche to Napoleonville; thence in a straight line to Lake Verrett; across Lake Verrett and through Bayou Maxile into the Belle or Grand River.

I have personally inspected nearly all portions of the waterway. Material conditions at present, except in a few cases which are noted, are substantially as outlined in Major Howell's report. In Louisiana one general exception may be made in saying that there is more marsh and less swamp along the line of the route than I

had gathered from the report. This is important in that the marsh is more easily dredged, there being only the roots of grass and cane to remove, instead of roots of trees, as would be the case in a swamp.

It is not considered, therefore, necessary to have another survey made, as his survey still depicts conditions sufficiently well for purposes of estimate and determination of worthiness of the project. It is probably more exact than the certainty of correctness of assumed slope and price of dredging per yard, both of which affect the estimated cost greatly.

338 In a few places along the line mentioned hereafter additional surveys will be necessary to make sure of the best location. These surveys are not necessary for the determination of whether or not the work is worthy and need not be made until after appropriation is made for the work.

The determination of the worthiness of the project must depend principally on the cost of construction and the cost of maintenance, on the one hand, and on the benefit which will accrue to the sections of the country interested, on the other. The cost will depend primarily on the cross section and the price per yard assumed. One of the principal and most tangible benefits to this section of the country will be the saving in freight rates, which will therefore be gone into at some length.

Cross-section.

The question of cross-section has been given careful consideration. Major Howell recommends 60 feet width and 6 feet depth. The Interstate Inland Waterway Convention at Lake Charles favored a depth of 9 feet and width of 100 feet, in order that the waterway may be available for the boats which use the Ohio River. The total distance by the proposed waterway from Franklin, La., which will soon have communication under an existing project with the Mississippi to the mouth of the Sabine River, where the waterway crosses the Louisiana-Texas line, is 164 miles. To give the waterway 100 feet width and 9 feet depth, 150 miles of this 164 would have to be dredged. Much of the waterway is through lakes having a depth of 5 feet or more, but less than 9 feet. By adopting a cross-section 100 feet in width and 5 feet in depth the distance to be dredged would be reduced to 74 miles. As part of the way the proposed route will be through existing bayous, which already have considerable depth, but are narrow, a further saving in the distance to be dredged can be made by using a narrower width for the first cut.

Pages 9 and 10.

Map, Distances, and Estimates of Cost.

Attention is invited to the accompanying map, which gives a general idea of the location of the proposed waterway and of its connections and possibilities. As will be seen from an inspection of the map, the waterway will connect what are at present ten separate

systems of navigable waterways. A consideration of the subject, therefore, naturally leads to its subdivision into as many subsections. The distance from New Orleans by Mississippi River to Plaquemine is 111 miles, and from Plaquemine to Franklin, La., 86 miles. The distance along the line of the proposed waterway to an indicated point in each of these already navigable sections, together with the yardage in cost for the section and its estimated annual cost of maintenance are shown in the following table:

339	Distance. Miles.	Cubic yards.	Cost.	Maintenance.
Franklin to Vermillion River	49	629,500	$125,900.00	$10,000.00
To point opposite Mermentau River	43	816,963	163,392.00	10,000.00
To point opposite Calcasieu River	37	1,121,648	224,329.00	10,000.00
To mouth of Sabine River.	35	824,430	164,886.00	10,000.00
To Galveston	97	3,188,416	637,683.00	20,000.00
To Brazos River	54	707,644	141,528.80	20,000.00
To Pass Cavallo	78	2,762,488	552,497.60	20,000.00
To Aransas Pass	62	329,250	65,850.00	10,000.00
To Point Isabel	139	3,586,310	717,262.00	25,000.00
To Rio Grande	10	694,730	138,946.00	10,000.00
Lock (Howell's estimate).	...	.....	18,739.00	.....
Total	604	14,661,379	2,951,013.40	145,000.00

The Howell route left the Teche at Franklin (442), and by a straight reach of 14,623 feet, or a scant 3 miles, entered Murphys Canal at 89. Since that time Murphys Canal has been extended, so that the least distance to the Teche is now about 1½ miles. This line goes through the town of Franklin and there would probably be trouble in securing a right of way for it. The Southern Pacific Railroad has since been built, so that it would have to be crossed and a draw put in and maintained by some one. My understanding of the law in such cases is that if the waterway crosses the railroad at a place other than a stream which is navigable or which is capable of being made navigable, the railroad can not be required to put a draw in at its own expense and maintain it; that if it crosses at a stream which is navigable or which is capable of being made navigable, the railroad can be required to do it at its own expense.

A branch of the Murphy Canal has been dug which passes farther westward through Bayou Yoakley under the railroad bridge west of the town of Franklin. The Hanson Lumber Company is said to be about to undertake the construction of a canal 8 feet deep, 40 feet wide, from the Teche into Murphys Canal or into Bayou Potage, into which Murphys Canal empties. They will cross the railroad just east of the town of Franklin and would probably be willing to turn over their right of way and canal to the United States if the latter would widen and maintain it. A little farther east the Yellow Bayou drainage district is undertaking the construction of a canal which will empty probably into Bayou Potage, and will be

dug back to the point where Yellow Bayou crosses the railroad. The railroad has a fixed trestle bridge here, with a span between abutments of about 90 feet. From this point to the Teche is a little over a mile.

In view of this situation it would seem that by negotiation an arrangement might be made which would be advantageous to the local authorities in securing the right of way in case the route is laid along the short line, by the United States assuming part of the cost of the construction of the drawbridge if the railroad would assume the balance and the maintenance. Conditions are still changing so rapidly that it seems best not to attempt to specify exactly just which of these lines should be taken, but to leave the matter to be settled by the Department in such a way as shall be most advantageous after the general appropriation has been made.

340 Page 28.

Rights of Way and Bridges.

In this connection recommendation is made that all appropriations for the entire waterway shall be conditional upon right of way being furnished free of charge by communities and parties interested in the improvement; also on the condition that public and all private bridges, excepting possibly certain railroad bridges already referred to, be furnished with draws of suitable width and maintained indefinitely at the expense of the communities or parties owning them.

In view of the fact that much of the canal will probably have to be widened and that it will be as easy to get rights of way on a 100-foot basis to start with, it is recommended that all rights of way be secured to provide eventually for a 100-foot channel with the probable slopes. Drawbridges on the Teche have 75-foot openings; on the Brazos the last one put in has 95 feet clear opening. It is recommended that no bridges be permitted to be constructed with less than 75-foot openings where the water is still, and with less than 100-foot openings where the waterway is through a bay in which vessels and tows are subject to wind.

Pages 29 and 30.

Report of the Board of Engineers for Rivers and Harbors.

The Board of Engineers for Rivers and Harbors.

Washington, D. C., December 22, 1906.

GENERAL:

The act of March 3, 1905, in that part providing for preliminary examinations and surveys, contained the following items:

Inland waterway from the Rio Grande River, Texas, to a connection with the Mississippi River at Donaldsonville, La., said examination to be made in sections, as follows:

First. From the Rio Grande River to Aransas Pass, including navigable channel from Corpus Christi through Turtle Cove to ransas Pass.

Second. From Aransas Pass to West Galveston Bay channel at e Brazos River, including a channel from Aransas Pass to Vic-ria, on the Guadalupe River, and to Cuero.

Third. From the Brazos River to Sabine Pass.

Fourth. From Sabine Pass to Donaldsonville.

A survey and estimate shall be made of the following portions of ie above waterway, to wit, from Aransas Pass, via Turtle Cove, to orpus Christi, and from Aransas Pass to and up the Guadalupe iver to Victoria, and from Victoria to Cuero.

The last item of the law calls for surveys of the portion of the nland waterway from Aransas Pass, via Turtle Cove, to Corpus hristi, and from Aransas Pass to and up the Guadalupe River) Victoria, and from Victoria to Cuero. The recommendations of he Board on these surveys have been submitted to the Chief of Engineers under dates of December 6 and 7, 1906, respectively.

41 The Board of Engineers for Rivers and Harbors at several of its recent sessions has had under consideration the accom-anying report of the district officer on the examinations required by he above provision of the law. In connection with this subject the Board held duly advertised public hearings at Galveston, Tex., on November 21, at Victoria on November 22, and at Corpus Christi on November 24, 1906, at which statements and arguments were pre-ented by those interested in the proposed improvement. Hon. ieorge F. Burgess, M. C., and Hon. J. N. Garner, M. C., have ap-eared before the Board and careful consideration has been given to heir remarks in behalf of the improvement.

In 1873 and 1874 a survey was made by Maj. C. W. Howell, Corps f Engineers, for constructing an inland waterway from Donaldson-ille, La., to the Rio Grande, and the route now under consideration s based largely on the findings of that survey. The district officer as personally inspected nearly all portions of the waterway and inds the physical conditions substantially as outlined in Major How-ll's report, which obviates the necessity for making another survey or purposes of estimate.

In the accompanying report the district officer gives careful con-ideration to the determination of a suitable width and depth for the roposed waterway, and reaches the conclusion that a canal 5 feet eep and 40 feet bottom width will provide sufficient facilities for the resent, although, in his opinion, it is highly probable that a canal f dimensions 100 feet by 9 feet will eventually be required, at least in some reaches. All his estimates are therefore based upon the cost of obtaining a canal 5 feet deep and 40 feet bottom width, with appropriate side slopes.

The district officer in his report has gone quite fully into the prob-able prospective commerce of the waterway if completed and into the effect the waterway would have upon freight rates, and has calcu-

lated the probable saving to the community both on the through and local commerce. The Board has given careful consideration to the arguments of the district officer on the points mentioned and to the various papers and arguments submitted to it or its committee at various meetings, but it is unable to concur with the district officer in his conclusions as to the probable through commerce of such a waterway and as to the effect which the existence of such a waterway will have upon rates on through freight or upon freight between points on the waterway and distant points.

There is at present in existence between important points of the canal route a water route through the Gulf of Mexico available between such points as New Orleans, Sabine, Galveston, and possibly Aransas Pass, for deep-draft vessels. The Board does not believe that a long canal of small dimensions can compete on through traffic with the Gulf route, and therefore that the existence of the waterway could not in future have a greater effect upon through freight rates than the existing Gulf route. The Board is therefore of the opinion that the prospective through commerce is not sufficient to justify the construction of the continuous inland waterway. However, the consideration of the local commerce has convinced
342 the Board that the existing and prospective commerce over certain sections of the canal is sufficient to justify its construction for local needs only.

Pages 32 and 33.

Sabine to Donaldsonville.

For purposes of estimate and the consideration of the necessities of commerce this portion of the waterway is divided by the district officer into five section, viz: Donaldsonville to Franklin, Franklin to Vermilion, Vermilion to Mermentau, Mermentau to Calcasieu, and Calcasieu to Sabine.

Since the date of Major Howell's report on a survey for a waterway from the Rio Grande to Donaldsonville, La., the United States has undertaken the improvement of Bayou Plaquemine, the project for which, as adopted in 1887, provides for dredging a channel in Bayou Plaquemine 60 feet wide and 6 feet deep from deep water up to the Plaquemine dike, constructing a lock to connect the bayou with the Mississippi River, securing the mouth of the Bayou from further caving, and removing obstructions from Grand River and Pigeon bayous, at a total estimated cost of $1,708,250, subsequently increased to $1,740,000, and modified to allow for dredging Bayou Plaquemine to a depth of 10 feet and a width of 125 feet. This improvement affords the desired connection with the Mississippi via Grand River and Plaquemine Bayou. It is understood by the Board that the Plaquemine improvement is to be carried to completion, and it is therefore of the opinion that it is not advisable at the present time for the United States to undertake the proposed work designed to provide another connection with the Mississippi at Donaldsonville.

To connect with the above improvement, the district officer pro-
es a waterway from Franklin, on Bayou Teche, to Vermilion
ver, and thence to Lake Misere, west of the Mermentau River.
e cost of the work proposed between Franklin and the Mermentau
stimated at $289,292 and its maintenance at $20,000 per year.
The district officer states that this section will probably actually
nsport a large amount of its heavy freight by water. It con-
ns two large salt mines, and is the meeting ground of the rice and
gar countries of Louisiana. Its western portion borders the larg-
rice section of Louisiana, where numerous navigable drainage
nals have been constructed by private interests. The commerce
at might be expected to use the water route includes extensive
tputs of oil and lumber. After careful consideration of all avail-
le data, the Board concurs with the district officer that the section
the waterway from Franklin to the Mermentau River is worthy of
provement by the United States.
The district officer estimates the cost of the work necessary to con-
ct Mermentau River with Lake Sabine at $389,215, and $20,000
per annum for maintenance.

3 To a considerable extent the commerce of this section con-
sists of lumber, and while the output is at present large, this
dustry is one which will probably decrease as the sources of supply
proximity to the waterway becomes exhausted. There are, how-
er, other items of merchandise which would probably give to this
rtion of the waterway, if constructed, a considerable amount of
mmerce, but the Board is of the opinion that the prospective com-
erce is hardly sufficient to justify at the present time the expendi-
re of the large sum necessary to construct this portion of the
aterway. Before recommending such an expenditure the Board
inks it more advisable that the section from Franklin to the Mer-
entau should be first completed, which would open up a through
aterway from the Mississippi to the Mermentau. If the commerce,
hich will thereupon develop upon the completed portion of the
aterway, shall be as great as is now expected, it may then be ad-
sable to extend this waterway from the Mermentau to Sabine.
Summing up its conclusions, the Board recommends the improve-
ent of the following sections of the proposed inland waterway from
e Rio Grande to the Mississippi:

	Cost of original work.	Cost of annual maintenance.
Aransas Pass to Pass Cavallo.....	$65,850.00	$10,000.00
Brazos River to Galveston.....	141,528.80	20,000.00
Donaldsonville to Franklin (no estimate of cost necessary, as suitable connection with the Mississippi is afforded via Bayou Plaquemine, now under improvement).....	.....	.....
Franklin to Mermentau River....	289,292.00	20,000.00
Total	496,670.80	50,000.00

Respectfully submitted,

D. W. LOCKWOOD,
Colonel, Corps of Engineers.
R. L. HOXIE,
Lieut. Col., Corps of Engineers.
E. EVELETH WINSLOW,
Major, Corps of Engineers.
CHESTER HARDING,
Major, Corps of Engineers.
W. J. BARDEN,
Captain, Corps of Engineers

Brig. Gen. A. Mackenzie,
Chief of Engineers, U. S. A.

344 House Document No. 610, 63rd Congress, Second Session.

Extracts Designated by Præcipes for Transcript.

Pages 7 and 8.

Intracoastal Waterway—St. Georges Sound to the Rio Grande Section.

War Department,

Office of the Chief of Engineers.

Washington, January 15, 1914.

From: The Chief of Engineers, United States Army.
To: The Secretary of War.
Subject: Intracoastal waterway—St. Georges Sound, Fla., to the Rio Grande.

1. There is submitted herewith, for transmission to Congress, report dated February 1, 1910, prepared by a special board of engineer officers, in accordance with provisions contained in the river and harbor act approved March 3, 1909, as follows:
Sec. 13. * * *

Intracoastal Waterways.

* * * * * * *

Survey for the construction of a continuous waterway, inland where practicable, along the Gulf of Mexico from Saint Georges Sound, Florida, to the Mississippi River at New Orleans, Louisiana, by way of Saint Andrews Bay, Choctawhatchee Bay, Pensacola Bay, and Perdido Bay, Florida; Mobile Bay, Alabama; Mississippi Sound, Alabama and Mississippi; Lake Borgne and Lake Pontchartrain, Louisiana, for the purpose of ascertaining the cost of a channel with a maximum depth of nine feet, or such lesser depths along any section or sections of the said waterway as may be found to be sufficient for commercial, naval, or military purposes. Such survey, shall include an examination of all practicable routes, the preparation of plans and estimates of cost along the most available route, and a report upon the desirability of utilizing as a part of such waterway any existing public or private canal, or any part thereof, and the probable cost of acquiring the same.

* * * * * * *

Inland Waterway of Louisiana and Texas.

Survey for the construction of a continuous inland waterway from the Mississippi River to Bayou Teche; thence to Mermentau River; thence to Calcasieu River; thence to the Sabine River, Louisiana and Texas; thence to Galveston, Texas; thence to Brazos River, Texas; thence to Pass Cavallo; thence to Aransas Pass; thence to Point Isabel; and thence to the Rio Grande, for the purpose of ascertaining the cost of a channel with a maximum depth of nine feet, or such lessere depths along any section or sections of the said waterway as may be found to be sufficient for commercial,
345 naval, or military purposes. Such survey shall include an examination of all practicable routes, the preparation of plans and estimates of cost along the most available route, and a report upon the desirability of utilizing as a part of such waterway any existing public or private canal, or any part thereof, and the probable cost of acquiring the same: Provided, That whenever, in the making of a survey of any of the preceding waterways, field work shall indicate that the proposed improvement is clearly inadvisable no detailed survey or plans shall be made.

2. Owing to the extent of coast involved and to the differing conditions, natural and commercial, between the various parts of the route, it was found advisable to examine and report upon this stretch of inland waterway in 12 sections, divided as follows:

Section 1—St. Georges Sound through Apalachicola Bay to St Andrews Bay.

Section 2.—St. Andrews Bay to Choctawhatchee Bay.

Section 3.—Choctawhatchee Bay to Pensacola Bay.

Section 4.—Pensacola Bay to Mobile Bay.

Section 5.—Mobile Bay to Mississippi River:

Section 6.—Mississippi River to Sabine River.

(*a*) Mississippi River to Bayou Teche.

(*b*) Bayou Teche to Mermentau River.

(*c*) Mermentau River to Sabine River.

Section 7.—Sabine River to Galveston Bay.

Section 8.—Galveston Bay to Brazos River.

Section 9.—Brazos River to Pass Cavallo.

Section 10.—Pass Cavallo to Aransas Pass.

Section 11.—Aransas Pass to Brazos Santiago.

Section 12. Brazos Santiago to Rio Grande.

Intracoastal Waterway from St. Georges Sound, Fla., to the Rio Grande, Tex.

Sections. No.	Extent.	Estimated cost for construction of channels of— 5 feet draft 40-65 feet width.	6 feet draft 100 feet width.	7 feet draft 75 feet width.	9 feet draft 100 feet width.
1	St. Georges Sound to St. Andrews Bay	(1)	.....	$614,700	$1,005,900
2	St. Andrews Bay to Choctawhatchee Bay	[2]$3,000,000	.....	3,321,250	4,311,750
3	Choctawhatchee Bay to Pensacola Bay	(1)	(1)	[3]30,000	90,000
4	Pensacola Bay to Mobile Bay	[2]330,338	.....	432,435	717,240
5	Mobile Bay to Mississippi River	227,000	.....	312,015	529,650
6a	Mississippi River to Bayou Teche	826,000	.....	1,655,500	2,242,900
6b	Bayou Teche to Mermentau River	477,125	.....	1,869,250	2,810,950
6c	Mermentau River to Sabine River	453,660	.....	1,188,150	2,085,735
7	Sabine River to Galveston Bay	475,000	.....		1,698,000
8	Galveston Bay to Brazos River	(4)	.....		623,700
9	Brazos River to Pass Cavallo	(5)	.....		1,314,420
10	Pass Cavallo to Aransas Pass	(5)	.....	(6)	3,246,905
11	Aransas Pass to Brazos Santiago	843,787	.....		2,634,885
12	Brazos Santiago to Rio Grande		.....		476,855
	Total, sections 1-12	6,632,910	.....	15,723,300	23,788,890
	Total, sections 3-12	3,632,910	.....	11,787,350	18,481,240

[1] Already provided.
[2] For 65-foot width.
[3] About.
[4] Already provided to 40-foot width.
[5] Already provided to 65-foot width.
[6] Roughly estimated at $6,300,000, or two-thirds of 9-foot channel.

6. In these estimates the 5-foot channel is of 65 feet width; the foot channel of 75 feet width, and the 9-foot channel of 100 f width.

7. The said estimates make no allowance for cost of right of w except for a few portions of sections 5 and 12, it being believed t in most instances the advantage to the localities concerned will sufficient to cause the communities interested in the movement benefited thereby to furnish the right of way required free of cos the United States; and, furthermore, the estimates are based on assumption (as recommended by both boards) that the actual rou in detail to be adopted within the different sections shall at the ti of actual construction work be subject to change or modification the War Department according to such local conditions as may th exist. (See par. 32, Report of the Board of Engineers for Rivers Harbors.)

347 8. In some cases the estimates of the 5-foot depth chan as given in the above table differ slightly from those given the reports of the special board and of the Board of Engineers Rivers and Harbors, or are omitted entirely, because of the fact t while the examinations and reports based thereon were in progr Congress took up the question of improvement of some of the tions, and made appropriations for waterways of 5-foot depth greater.

9. The above estimates show that it is possible to secure a conti ous waterway of 9-foot depth from St. Georges Sound to the Grande at the present time at a total cost of about $24,000,000; (assuming that the cost of a 7-foot depth in the last six sections in the first six sections, will be about two-thirds of the cost of a 9-f depth) they also indicate that a 7-foot depth continuous chan from St. Georges Sound to the Rio Grande can be secured at a cos about $16,000,000; while a 5-foot depth channel over the same tance can be secured for a little less than $7,000,000, and a 5-f depth from Choctawhatchee Bay to the Rio Grande (sections 3 to inclusive) can be secured for not exceeding $3,633,000.

Pages 16 and 17.

(*b*) Bayou Teche to Mermentau.

17. As stated within, Congress adopted a project under the ac March 2, 1907, for a waterway over this reach 5 feet in depth and feet wide. The route proposed under this project was from Frank via a dredged canal to Cote Blanche Bay, Vermilion Bay, Schoo Bayou, a dredged canal to White Lake, through White Lake three small lakes to Grand Lake, which is an enlargement of M mentau River. This project was modified by the act of March 1909, which authorized the location of the eastern terminus of waterway at any suitable point on Bayou Teche that the Secret of War might select, and again by the act of February 27, 1911,

authorizing such changes in the location of said canal as may be considered desirable, provided a right of way is secured to the United States free of cost.

18. It is stated in the survey report that since the adoption of the project it has developed that the route through Cote Blanche and Vermilion Bays is impracticable on account of the exposure and the soft character of the bottom and the resulting tendency of any dredged channel to deteriorate rapidly. In view of this fact, the special board has considered a project for a route north of these bays. Between Bayou Teche and Vermilion Bay there are a number of possible routes described and estimated on, and may be briefly referred to, beginning with the norther-most, as New Iberia route, Jeanerette route, Franklin route, Hanson Canal route, and Centerville route. All of these routes come together at Bayou Carlin, from which point to the Mermentau they coincide, passing through the marsh
348 on the north of Vermilion Bayou to Vermilion River, thence through the marsh to Schooner Bayou, and to avoid the shallow waters of White Lake and Grand Lake, which have the same objections as Cote Blanche and Vermilion Bays, pass to the north of these waters to the Mermentau.

19. The special board regards the Hanson Canal route as the best between Bayou Teche and the Bayou Carlin, after which, in the order given, it prefers the Centerville, Franklin, and Jeanerette routes. The special board recommends a canal 7 feet deep with a bottom width of 75 feet from Bayou Teche to Bayou Carlin, the preferences being given in the order named to the Hanson Canal, Centerville, Franklin, and Jeanerette routes, and from Bayou Carlin to the Mermentau by a route north of the lakes as described in the report. The estimated cost of this section of the waterway is:

Bayou Teche to Bayou Carlin	$553,000
Bayou Carlin to Vermilion	461,250
Vermilion to Mermentau	855.000
Total	1,869,250

The estimated cost of maintenance is $25,000 per year.

Pages 41 and 42.

Bayou Teche to Mermentau River.

The physical features in this section are almost identical with those in the section from the Missisippi River to Bayou Teche just described practically the only difference being the narrower width of marsh, owing to the fact that salt water extends farther inland. Congress has already recognized the value of an intercoastal waterway through this region, and, by the river and harbor act of March 2, 1907, made appropriation for a canal of 5 feet depth and 40 feet

bottom width from Bayou Teche to the Mermentau River, followi
the route laid down by Maj. Jadwin in his report upon the inter
waterway from the Rio Grande to the Mississippi, published
House Document No. 640, Fifty-ninth Congress, second sessi
The route stated in this report was to extend from the Teche
Franklin to the nearest point on Cote Blanche Bay, an arm of t
Gulf of Mexico, and thence into Vermilion Bay, another body
salt water, to Schooner Bayou, thence by canal to White Lake, a
from White Lake to Collicon Bayou and Grand Lake, an enlar
ment of the Mermentau River. This route was selected on accou
of the small amount of excavation which would be required in t
original construction. The fact has, however, since developed th
the route is impracticable through Cote Blanche and Vermili
Bays, and inadvisable in the large lakes, on account of the s
character of the bottom and the resulting tendency of any dredg
channel to fill under wave action. The exposure and roughness
these bodies of water render them also unsuitable for navigation
vessels of a class which would use the canal. Due to th
349 facts, Congress, by the river and harbor bill of March
1909, authorized the Secretary of War to select such oth
point on Bayou Teche as the eastern terminus of the canal as mig
be found most advisable. It is believed to be good policy to loc
the route of the 5-foot canal, along such lines that it can be su
sequently enlarged to a 7-foot or 9-foot canal, as may be found
sirable. The depths in Cote Blanche Bay are such that a 9-f
canal would practically have to be dredged the entire length
the bay, and dredging would also be required a larger part of t
distance through both it and Vermilion Bay for a waterway of
feet in depth. Any channel which may be dredged would pr
tically be obliterated within one year, and the board, under th
circumstances, regards any route through these bays as impr
ticable. The route along the north side of Vermilion Bay will ha
to be through the marsh and is well defined by the simple conditi
of selecting the shortest line. Between Bayou Carlin, at the nor
east corner of Vermilion Bay, and the Teche a large number
routes are available; from Bayou Carlin to the Mermentau th
coincide; the principal ones, beginning with the most northe
one considered, are as follows:

From the Teche in the vicinity of New Iberia, via the partial
constructed New Iberia drainage canal and Bayou Carlin, a distan
of 15 miles, to the meeting point of the different routes near t
mouth of Bayou Carlin.

The next route to the south is from the vicinity of Jeanere
following the St. Mary and New Iberia drainage canal, Bayou G
pego, Weeks Bayou and Bayou Carlin to the common point. T
distance is practically the same as from New Iberia, about 15 mil

The third route considered leaves Bayou Teche at Franklin a
proceeds about 1 mile to Bayou Yokely, thence partly by that bay
and a drainage canal to the St. Mary and Iberia branch draina

canal, Bayou Gaspego, and Weeks Bayou to Bayou Carlin, a distance of 24.8 miles.

The fourth line leaves the Teche by the Hanson Canal about 3 miles below Franklin, thence by Bayou Portage, Bayou Bartholomew, Bayou Chicot to Hog Bayou, and thence through the marsh to Weeks Bayou and Bayou Carlin, the total distance being 24.5 miles.

The fifth route starts from the Teche in the vicinity of Centerville and proceeds on a single line for about 1 mile to Thorgerson's drainage canal, following this canal for a distance of 5½ miles to Beaus Bayou, thence by Beaus Bayou, Birch Bayou to Bayou Bartholomew, thence by the same line as the preceding route, the total length being 29 miles.

Each one of these routes, except the fourth, will require the construction of a lock at a point of departure from the Teche, of one double-track swing bridge in the Southern Pacific Railroad, of two plantation railroad bridges, and about three highway bridges. A lock exists on the Hanson Canal, and this route will require a double-track railroad swing bridge and a highway swing bridge only. The first three will each require the erection of one single-track railroad bridge in addition to the structures named above.

350 Page 45.

The board regards the Hanson Canal route as the best between Bayou Teche and Bayou Carlin, after which it believes the Centerville, Franklin, and Jeanerette routes advisable in the order named. The cost of the New Iberia route is practically the same as that of the Jeanerette route, but the distance for all vessels bound to the Atchafalaya and the Mississippi River is several miles more by New Iberia than by Jeanerette. Both the New Iberia and Jeanerette routes have the disadvantage over those entering the Teche at Franklin or below of requiring all boats to traverse the large bends in the bayou between Jeanerette and Franklin. A route from the Teche at Baldwin above Franklin would involve about the same excavation as a line from the latter point, but the long bend in the bayou between these points makes it less desirable. The line by way of the Benson Canal offers the shortest route. The distance from Bayou Carlin to the mouth of Bayou Teche by the different routes *are:* New Iberia route 66½ miles; Jeanerette, 58 miles; by Franklin, 42 miles; the Hudson Canal, 38 miles; and by Centerville, 41 miles. The lock on the Hanson Canal was built for rafting purposes and is of excessive length, but as it is believed that it will answer all purposes for several years to come, no estimate is included for rebuilding it. A new lock of slightly greater width would cost the same as on the other routes—that is, about $50,000.

Pages 45 and 46.

The board recommends the construction of a waterway 7 feet deep with a bottom width of 75 feet from the Teche to the Mermentau

along the line given, preferring the Hanson Canal route fo
351 the portion between the Teche and Bayou Carlin, but shoul
that not prove practicable, it regards the Centerville rout
as next desirable and the Franklin and Jeanerette routes as next i
order of desirability. The advantages of this waterway are quit
fully set forth in Maj. Jadwin's report above mentioned. Furthe
report on this subject it is believed is not necessary, especially a
Congress has already recognized the importance and value of thi
section.

Pages 57 and 58.

Attention is again invited to the statement made in one or tw
places in the body of the report to the effect that the routes specifie
are believed to be the best judging from the information that ha
been obtainable to this time. The board wishes, however, to hav
these recommendations so regarded, and believes it inadvisable t
have them taken as hard and fast lines which can not be change
or modied. Complications may arise concerning the right of wa
along one line which may be avoided by another, and where th
right of way is to be provided free of cost it is inadvisable to hav
the executive department tied to a single line which may be blocke
by a stubborn individual or hostile interests. East of the Missi
sippi River and west of the Sabine the lines upon which the wate
way should be located are pretty well and, in many cases, abs
lutely defined by natural conditions. Between the Mississippi an
the Sabine the character of the country is such that the route ma
be modified within limits without materially affecting either th
length of the line or cost of construction, and the board believ
that the department should be free to adapt itself to condition
which may prevail at the time the work is to be performed and no
required to meet those which existed at the time this report wa
made, and which may have changed in the interval so as to imped
the construction, increase the cost, or stop the work. Should th
appropriations be made promptly, it believes the routes it has recom
mended will provide the most economical and advantageous line

LANSING H. BEACH,
Lieut. Col., Corps of Engineers.
H. JERVEY,
Maj., Corps of Engineers.
JOHN C. OAKES,
Capt., Corps of Engineers.
H. B. FERGUSON,
Capt., Corps of Engineers.
A. E. WALDRON,
Capt., Corps of Engineers.

The Chief of Engineers, United States Army.

352 *Præcipe of Plaintiff in Error for Transcript and Notice of Filing Thereof.*

Filed February 20th, 1922.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LTD., Plaintiff in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

To the Honorable Frank H. Mortimer, Clerk United States Circuit Court of Appeals, Fifth Circuit:

The Clerk of this Court is hereby directed to prepare and certify transcript of record in the above entitled case, for the use of the Supreme Court of the United States by including therein the following:

1st. March 8th, extract of minutes of argument and submission of the case before Circuit Judges Walker, Bryan and King, United States Circuit Court of Appeals, Fifth Circuit.

2nd. Opinion and decree of the United States Circuit Court of Appeals, Fifth Circuit, reversing judgment filed March 29th, 1921.

3rd. Petition for rehearing filed by the United States of America on May 6th, 1921.

4th. Order granting petition for rehearing and minute entry thereon of date July 27, 1921.

5th. Opinion and decree of the United States Circuit Court of Appeals, Fifth Circuit, affirming judgment entered and filed January 21st, 1922.

6th. Petition for rehearing by the Albert Hanson Lumber Company Limited, plaintiff in error, filed February 9, 1922.

353 7th. Order of the Circuit Court of Appeals, Fifth Circuit, denying rehearing, entered February 14, 1922.

8th. Petition for writ of error by the Albert Hanson Lumber Company, Limited, plaintiff in error, and order allowing same, filed and entered February 15, 1922.

9th. Assignment of errors filed in the United States Circuit Court of Appeals, Fifth Circuit on February 15, 1922.

10th. Supersedeas Bond on writ of error filed February 15, 1922.

11th. Citation on writ of error and Marshal's return thereon.

12th. Copy the following from House Document 640, 59th Congress, 2nd Session, pages 1, 2, and 3 to end of second paragraph on page 3; page 4, first paragraph commencing with word "route" to word- "Grand River;" and on page 4 last paragraph commencing with word- "Cross section" down to end of said paragraph on page 5 ending with the words "first cut"; on page 10 first paragraph, commencing with the words "Howell Route" to the end of said paragraph of way and bridges" beginning with words "in this connection" down to the end of paragraph ending with the words "or parties owning them;" page 29 commencing with the words "report of the Board of Engineers" down to the words "Victoria to Cuero" of the last paragraph of the four items; on page 32 commencing with the title "Sabine to Donaldsonville" down to the words "Brig. Gen. A. M. McKenzie Chief of Engineers, U. S. A." on page 33.

13th. Copy the following from House Document 610, 63rd Congress, 2nd Session: On pages 16 paragraph 19 and the remaining portion of paragraph 19 on page 17. Page 41, copy commencing with title "Bayou Teche to Mermentau" to page 42 ending with the words "named above" in second paragraph of page 42; Page 45 commencing with the words "The Board regards" ending with the words "about $50,000.00" commencing on last paragraph of page
354 45 with the words "The Board recommends" down to the end of said paragraph on page 46 with the words "this section."

14th. The following diagrams, plats or maps to go up in the original to be attached to and form part of the transcript. Exhibits marked 2 and 3 referred to in the petition of the United States.

15th. Map or diagram of Hanson Canal, original filed in evidence in connection with testimony of W. Y. Kempter.

16th. Copy of præcipe and notice of filing præcipe.

17th. The entire transcript of record in the United States Circuit Court of Appeals, Fifth Circuit No. 3644, entitled Albert Hanson Lumber Company, Limited, plaintiff in error vs. United States of America, defendant in error, to the District Court of the United States for the Eastern District of Louisiana, the original being filed on December 17th, 1920, in the United States Circuit Court of Appeals Fifth Circuit, and being printed in said Court under the above titled and number 3644, and filed January 18th, 1921.

18th. Certificate of the Clerk of the United States Circuit Court of Appeals, Fifth Circuit, certifying to the transcript of record, assignment of error, and proceedings in the above entitled and numbered cause being No. 3644 of the docket of said court.

Feby. 20th, 1922.

(Signed) EMMET ALPHA,
E. HOWARD McCALEB,
Attorneys for Plaintiff in Error.

United States Circuit Court of Appeals, Fifth Circuit.

355 No. 3644.

ALBERT HANSON LUMBER COMPANY, LTD., Plaintiff in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

To Louis H. Burns, United States District Attorney, Attorney for United States of America, defendant in error:

Please take notice that on the 20th day of February, 1922, the undersigned filed with the Clerk of this Court, a præcipe for the record, to be transmitted to the Supreme Court of the United States on writ of error sued out in the above case, a copy of which præcipe is herewith served on you.

Dated this 20th day of February, 1922.

(Signed) EMMET ALPHA,
E. HOWARD McCALEB,
Attorney- for Albert Hanson Lumber Co., Ltd., Plaintiff in Error.

Service of the within notice and præcipe was made by me in person on Louis H. Burns, U. S. Atty., Atty. for defendant in error on 20th day of February, 1922, by handing copies thereof to said Louis H. Burns in person, he having refused to accept service in writing.

(Signed) E. HOWARD McCALEB,
Attorney for Defendant in Error.

356 *Præcipe of Defendant in Error for Transcript.*

Filed February 27th, 1922.

United States Circuit Court of Appeals, Fifth Circuit.

No. 3644.

ALBERT HANSON LUMBER COMPANY, LTD., Plaintiff in Error,

versus

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Easte District of Louisiana.

Præcipe.

Frank H. Mortimer, Esq.,
Clerk,
New Orleans, La.

SIR:

On behalf of the Defendant in Error, you are requested to inclu in the record to be printed in the above numbered and entitl matter, the following additions and amendments offered to t Præcipe filed on behalf of the Plaintiff in Error:

Amend the 12th paragraph of the Præcipe of Plaintiff in Err as follows:

Re House Document 640, 59th Congress, 2nd Session (1907).

Add and amend as to page 4 of said House Document, so as make the clause read commencing with the word "route" to t word "length," at the end of the 5th paragraph;

Add and amend so as to copy page 9 of said House Docume beginning with the words "maps, distances, and estimates of cost and end on page 10 with the words "has been made" at the end the third paragraph;

Also add and amend as to page 28 by beginning with the wo "rights of way and bridges" and end with the words "subject wind."

Also add and amend as to page 29, by beginning with the wo "report of Board of Engineers for Rivers and Harbors" through t page and to the words on page 30, "for local needs only."

357 These additions and amendments to the 12th paragra to be in addition to the matter requested to be included Plaintiff in Error.

Re House Document 610, 63rd Congress, 2nd Session (1914).

Amend by adding so as to include page 7, complete, and paragraph 2 on page 8, ending with the words "Rio Grande."

Add and amend by including on page 9 from the words "Intracoastal Waterway, etc." to the figures on page 10 "$3,633,000."

At page 16, include from the words "Bayou Teche to Mermenteau" all of paragraphs 17, 18 and 19;

Add and amend at page 57, beginning with the words "attention is again" to the words "Chief of Engineers, U. S. Army," at page 58, and all of the above to be in addition to the matter requested to be printed by the Plaintiff in Error.

I enclose herewith for your convenience, an official copy of House Document, 610, which is missing from your files.

Respectfully,

(Signed) L. H. BURNS,
United States Attorney.

358 *Clerk's Certificate.*

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 299 to 357 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, as specified in the præcipes copied at pages 352 and 356 hereof, in a certain cause in said Court, numbered 3644, wherein Albert Hanson Lumber Company, Limited, is plaintiff in error, and The United States of America is defendant in error, as full, true and complete as the originals of the same now remain in my office;

I further certify that the pages of the printed record numbered from 1 to 298 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals;

I further certify that the following exhibits, forwarded to this Court in the original, are transmitted herewith to the Supreme Court of the United States in the original, as per præcipe of plaintiff in error copied at page 352 of this record, to wit:

Plaintiff's Exhibit 2—Map of Hanson Canal;

Plaintiff's Exhibit 3—Map of Hanson Canal;

Defendant's Exhibit—Map of Hanson Canal by Walter J. Kemper.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of

New Orleans, Louisiana, in the Fifth Circuit, this 8th day of March, A. D. 1922.

[Seal of the United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

359 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is the said United States Circuit Court of Appeals before you, or some of you, between Albert Hanson Lumber Company Limited, plaintiff in error, and United States of America, defendant in error, a manifest error hath happened, to the great damage of the said Albert Hanson Lumber Company Limited, plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the Fifteenth day of February, in the year of our Lord one thousand nine hundred and twenty two (1922).

FRANK H. MORTIMER,
Clerk of the United States Court of Appeals.

Allowed by
R. W. WALKER,
U. S. Circuit Judge.

Clerk's Office.

I hereby certify that a true copy of the within writ has this day been lodged in the clerk's office for the use of the defendant in error February 15th, 1922.

[Seal of the United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk.

[Endorsed:] No. 3644. United States Circuit Court of Appeals, Fifth Circuit. Albert Hanson Lumber Co., Ltd., Plaintiff in Error, vs. The United States of America, Defendant in Error. Writ of error.

360 THE UNITED STATES OF AMERICA:

The President of the United States to United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a writ of error sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Albert Hanson Lumber Company Limited, is plaintiff in error and the United States of America is defendant in error to show cause, if any there be, why the judgment rendered against the said Albert Hanson Lumber Company Limited, plaintiff in error and in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, this Fifteenth day of February in the year of our Lord one thousand nine hundred and twenty two (1922).

R. W. WALKER,
United States Circuit Judge.

Received by U. S. Marshal, New Orleans, La., February 16, 1922, and on the same day, month and year I served copy of this writ on Louis H. Burns, United States District Attorney for the Eastern District of Louisiana, and counsel in the within entitled cause by handing the same to him in person, in the City of New Orleans, Louisiana.

VICTOR LOISEL,
U. S. Marshal,
By T. J. GALBRETH,
Deputy U. S. Marshal.

[Endorsed:] Original. No. 3644. United States Circuit Court of Appeals, Fifth Circuit. Albert Hanson Lumber Co., Ltd., Plaintiff in Error, vs. The United States of America, Defendant in Error. Citation. Filed 16th day of February, 1922. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

Endorsed on cover: File No. 28,759. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 300. Albert Hanson Lumber Company, Ltd., plaintiff in error, vs. The United States of America. Filed March 10th, 1922. File No. 28,759.

INDEX.

	Page.
STATEMENT	1
THE FACTS	3
ARGUMENT:	
By the act of 1912 the Secretary of War was authorized to purchase this property	10
The acquisition of the property having been authorized by statute, the Secretary of War had power, under the act of August 1, 1888, c. 728, 25 Stat. 357, to acquire the property by condemnation proceedings	11
The history of the act of 1888 shows that Congress intended that full effect should be given to its sweeping terms	13
The naming of a specific price at which the Secretary of War was authorized to procure the property did not preclude condemnation proceedings	18
Congress has simply said that the Secretary of War may procure the property at not more than a specified sum, or, in the alternative, may submit the question of the value of the property to judicial determination	19

AUTHORITIES.

Shoemaker v. *United States*, 147 U. S. 282	20
United States v. *Beatty*, 198 Fed. 284	12
United States v. *Beatty*, 203 Fed. 620	12
United States v. *Graham & Irvine*, 250 Fed. 499	12
Act of August 1, 1888, c. 728, 25 Stat. 357	2, 11
Act of March 2, 1907, c. 2509, 34 Stat. 1089	3
Act of July 25, 1912, c. 253, 37 Stat. 201, 212	3, 10
19 Cong. Rec., part 2, p. 1387	13
19 Cong. Rec., part 7, p. 6401	13
19 Cong. Rec., part 7, p. 6505	13
House Document No. 610, Sixty-third Congress, second session	3
Revised Civil Code of Louisiana, Articles 2626–2641	2

In the Supreme Court of the United States

OCTOBER TERM, 1922.

ALBERT HANSON LUMBER COMPANY Ltd., plaintiff in error,
v.
THE UNITED STATES OF AMERICA.
No. 300.

ON WRIT OF ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The Government negotiated with the plaintiff in error, hereinafter called the company, for the purchase of a canal and adjacent land from the company. The canal is four and one-tenth (4.1) miles long and is situated in St. Mary Parish, Louisiana. The Government proposed to widen this canal and open it to public use. There was complete agreement between the parties as to the amount of property to be taken and the price to be paid for it. The only hitch came, finally, through a lack of certainty on the part of the company as to its title to a portion of the property, and, while the Government was fully

satisfied that the company had a good title to that portion, the company required formal though amicable condemnation proceedings in order to settle that question of title.

Before further action was taken the company tried to obtain certain rights of way near the canal, the obtaining of which depended upon a special local election, and declared that unless those rights of way were granted it would resist the condemnation. The results of the election were adverse to the company.

The present proceedings were then started. The company resisted condemnation upon the ground that it was not authorized by statute.

The case was tried in the District Court before a special jury of property owners of the vicinity of the canal in the manner provided by law. (Act of August 1, 1888, c. 728, sec. 2, 25 Stat. 357; Rev. Civ. Code of La., Articles 2626–2641.) The court ruled that the condemnation was authorized. Evidence as to value was produced by both sides and a verdict given for $65,000, the same amount as that upon which both sides in their negotiations had agreed.

On error, the Circuit Court of Appeals ruled that the condemnation was unauthorized and reversed the judgment. The attention of that court was then called to the Act of August 1, 1888, c. 728, 25 Stat. 357. The Court granted a rehearing, and decided that that Act authorized the condemnation, that the charge of the District Court was correct, and that

there was evidence to support the finding. It affirmed the judgment of the District Court.

Thereupon the company brought error to this Court.

THE FACTS.

This canal, known as the Hanson Canal, is a link of a great intracoastal canal projected by the Government, extending from Boston, Massachusetts, to the Rio Grande. (Act of July 25, 1912, c. 253, 37 Stat. 201, 212; Act of March 2, 1907, c. 2509, 34 Stat. 1089; House Document No. 610, 63rd Congress, Second Session.)

By the Act of 1912, *supra*, Congress authorized the Secretary of War to purchase this identical property for $65,000, and in specific cognizance of this Act the board of directors of the company passed a resolution authorizing its vice president to convey this property to the United States for the sum of $65,000 (R. 48, 49).

The resolution read as follows:

> Whereas by an Act of Congress approved March 2nd, 1907, entitled "An act making appropriations for the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes," provision was made for improving inland waterway channel from Bayou Teche to Mermentau, Louisiana, and whereas Congress, by act approved July 25th, 1912, provided as follows: "Improving waterway from Frankline to Mermentau, Louisiana; the Secretary

of War is hereby authorized to purchase for use as a part of said waterway the so-called Hanson Canal, in accordance with the recommendation made by the chief of engineers at a cost not to exceed sixty-five thousand dollars to be paid out of funds heretofore appropriated for this project;" *and whereas*

And whereas the Hanson Canal, which is owned by the Albert Hanson Lumber Company, extends through that portion of the route of said inland waterway hereafter described;

And whereas it is necessary for the United States to have and own a right of way three hundred feet in width in order to improve and enlarge said canal and make the same a part of the said Inland Waterway; *and*

And whereas the United States Government has proposed and agreed to purchase the said Hanson Canal for $65,000.00 from the Albert Hanson Lumber Company, Limited, including a 300 feet right of way and all locks and other constructions, for the improvement of said canal, and also all other constructions and encumbrances located on said right of way, except Morgan's Louisiana & Texas Railroad & Steamship Company railway bridge, the Iberia, St. Mary & Eastern Railway Company railway bridge, and one highway bridge;

Now, therefore, upon the payment of said sum of $65,000, as compensation for the said canal and locks and other constructions therein, and as the prices and consideration

for the necessary three hundred feet right of way, T. Cheney Lawless, Vice President of the Albert Hanson Lumber Company, being the chief executive officer of this corporation since the death of its president, is hereby authorized and empowered to grant, convey, donate, transfer, assign and set over, in the name and on behalf of the Albert Hanson Lumber Company, to and unto the United States of America and its assigns, all of the property designated and described as [here follows the description of the property].

Be it further resolved that the locks constructed in said Hanson Canal and the lock gates and all appurtenances incidental thereto, and all other real property located on the right of way of 300 feet width, except the M. L. & T. R. R. & S. S. Company railway bridge, the Iberia, St. Mary & Eastern Railway bridge, and one highway bridge, shall form part of the grant and become the property of the United States.

Be it further resolved that until the United States shall make actual payment and take actual possession of the said canal and right of way, the grantor, the Albert Hanson Lumber Company, Limited, shall have and retain the right to control, occupy, and use any and all portions of the above-described strip of land 300 feet wide, and keep trespassers off of it.

Be it further resolved that the grantor, the Albert Hanson Lumber Company, Limited, shall have and retain the right to remove all of

the trees and timber growing on or being on the banks of the said canal on the above described strip of land 300 feet in width, for a period of six months from the date of the actual payment and possession by the United States, provided the removal of such trees and timber is not required by the United States before the expiration of said six months, and provided further that upon the expiration of the said six months the timber still remaining shall belong to the United States.

Be it further resolved that the grantor, the Albert Hanson Lumber Company, Limited, and its assigns, shall always have and enjoy the free access, ingress, and egress to and from the said Hanson Canal, through the lateral canals now constructed and used by the Albert Hanson Lumber Company, Limited, in its timber operations and lumber business and for all such commercial purposes as the said lateral canals may be used for hereafter, even after the said Hanson Canal shall have been converted into a public inland waterway, provided said use of the canal is not contrary to or different from that of public navigable highways, and provided said use shall be under such regulations as may be prescribed by the Secretary of War.

Considerable time was spent by the Government in examination of title. Then, on April 14, 1919, it submitted a warranty deed to the company for signature. (R. 52.) Two days later the company declined to sign the deed because it was in doubt as to the validity of its title to a portion of the land.

George J. Bentz, a former owner of the portion, had left a minor posthumous child, Georgia Bentz, and the company was in doubt as to whether her interest had been legally divested. If it conveyed this portion under warranty deed it might be liable to the Government as warrantor. For this reason the company required a formal condemnation proceeding to which the minor should be made a party, so that her rights might be determined definitely. (R. 4, 51, 98, 99, 111, 116, 119.)

The Government therefore decided to condemn the property.

In the meanwhile the company was endeavoring to acquire certain rights of way in the neighborhood of the canal. The granting of these rights of way depended upon the result of a special local election. At this election the citizens refused to grant to the company the additional rights of way. Because of this defeat in the election the company has fought the present proceedings. (R. 115–120.)

Emmet Alpha, attorney for the company, thus testified (R. 118, 119):

> Q. Now up to that time there hadn't been any serious discussion about all these matters about which the evidence has been offered during this trial, about the length of tows, the time it takes to tow logs through the canal, the tide water and things, that had not been discussed at any time, had it?
>
> A. No, sir.

Q. And it was only after that special election went against the Hanson interests and you concluded to resist to the limit of your powers that the defense was made which you are now making?

A. What do you mean by defense?

Q. Well, I mean that these matters were brought out—the original complaint as indicated by your letter—and I think it is testified to by you—was that the Government, in order to divest the possible interest of this posthumous child, Miss Bentz, would have to bring a condemnation suit; that was the original position?

A. Yes, sir.

Q. That was practically acquiesced in by both sides, wasn't it?

A. Yes, sir.

Q. And up to the result of this election, there was no intention to make any fight, and, as your letter indicated, leave the question to be decided who should receive the proceeds?

A. Yes, sir.

Q. Now these other matters of defense, I say, were not discussed even until the election was held?

A. They were discussed only after that election, to the best of my recollection.

See also letter from Emmet Alpha, attorney for the company, on page 116 of the Record.

The present proceedings were instituted on June 10, 1920.

The essential question is as to the statutory authority to condemn the property; but the case was not fought solely upon that ground.

While the company repeatedly declared its willingness to convey the property to the Government for $65,000 (see the resolution adopted by its board of directors, p. 3, *supra*, and also R. 98, 99, 102, 103), the same amount which was afterwards awarded by the special jury of property owners of the vicinity of the canal, it claimed at the trial that the property possessed a higher value.

The company uses the canal simply as a highway on which it hauls its own logs and lumber. The Government is taking over the canal in order to widen it. There are approximately $51,000 immediately available for that purpose (R. 151, 152, 100); and the Engineer's office wishes to improve the canal immediately. (R. 152.) While the company will lose the right to the exclusive use of the canal, the canal will be widened to such an extent as to meet all the needs of the company, as well as those of the general public, and the company will be reimbursed for the original cost of the canal. (R. 102, 103.)

The engineer for the company admitted that the alleged damages to the company would be practically done away with by the widening of the canal. (R. 79.) It is also in evidence that it is feasible to institute regulations which will permit ample use of the canal by the company as well as by the general public. (R. 152, 164.)

The terms of the resolution of the board of directors of the company authorizing its vice president to convey the property to the United States for $65,000 have already been set forth (p. 3, *supra*). They do not show that the company then attached conditions to the proposed conveyance inconsistent with the rights which the Government will exercise after condemnation.

As the Circuit Court of Appeals decided—

> The charge of the Court properly submitted to the jury the finding of the value of the property and there was evidence to support the finding.

ARGUMENT.

By the Act of 1912 the Secretary of War was authorized to purchase this property.

The Act of July 25, 1912, c. 253, 37 Stat. 201, 212, reads:

> Improving waterway from Franklin to Mermentau, Louisiana:
>
> The Secretary of War is hereby authorized to purchase, for use as a part of said waterway, the so-called Hanson Canal, in accordance with the recommendation made by the Chief of Engineers, at a cost not to exceed sixty-five thousand dollars, to be paid out of funds heretofore appropriated for this project.

It may be freely conceded *arguendo* that this Act alone would not authorize the condemnation of the property. But the proceeding is based upon this Act combined with the Act of August 1, 1888, which

was intended by Congress to meet just such cases as the one now before the Court.

The acquisition of the property having been authorized by statute the Secretary of War had power, under the Act of August 1, 1888, c. 728, 25 Stat. 357, to acquire the property by condemnation proceedings.

That Act provides:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be, and hereby is, authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the United States circuit or district courts of the district wherein such real estate is located shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney-General of the United States, upon every application of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice.
>
> SEC. 2. The practice, pleadings, forms and modes of proceeding in causes arising under

> the provisions of this act shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding.

Under this Act the power to condemn is expressly conferred in every case where purchase has been authorized and purchase is impracticable; and there is nothing in the legislation in regard to the canal which shows that Congress intended that the general power of condemnation under the Act of 1888 should be suspended in this instance.

In *United States* v. *Beatty*, 198 Fed. 284, construing an appropriation "for the purchase of land" only, with no reference to condemnation in the text of the act, the Court said (p. 287):

> The first section of the Act of 1888 makes further discussion (of the meaning of the word "purchase") unnecessary. The very purpose of that section was to authorize condemnation whenever, theretofore or thereafter, an act of Congress authorized land to be "procured" for public use. Surely no broader word than "procure" could have been used.

The Court was not overruled on this point in 203 Fed. 620.

In *United States* v. *Graham & Irvine*, 250 Fed. 499, a case involving condemnation under the Weeks Forestry Law, the text of which contains no reference to condemnation, the Court said (p. 502):

It must be assumed that in enacting the act of 1911 Congress had in mind the act of 1888. Sutherland, Stat. Constr. §333; 36 Cyc. 1146. *In view of the act of 1888 it was quite unnecessary to use* in the act of 1911 *words expressly stating an intent to permit acquisition of lands by condemnation.*

The history of the Act of 1888 shows that Congress intended that full effect should be given to its sweeping terms.

When the bill upon which the Act of 1888 was based passed the House of Representatives (Feb. 21, 1888, 19 Cong. Rec., part 2, p. 1387) it was much narrower in its scope than the present act. The Senate, however, on July 17, adopted amendments which greatly enlarged the effect of the proposed legislation; and the House of Representatives concurred in those amendments two days later without debate (19 Cong. Rec., part 7, p. 6505).

The action of the Senate, and the accompanying discussion, are reported in 19 Cong. Rec., part 7, p. 6401, as follows:

SITES OF PUBLIC BUILDINGS, ETC.

Mr. SPOONER. I am instructed by the Committee on Public Buildings and Grounds to report favorably, with amendments, the bill (H. R. 6153) to authorize condemnation of land for sites of public buildings, and I ask unanimous consent that the bill may be considered at this time.

Mr. COCKRELL. Let it be read for information.

The PRESIDENT *pro tempore*. The bill will be read at length for information, subject to objection.

The Chief Clerk read the bill; and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration.

The PRESIDENT *pro tempore*. The bill having been read at length, a further reading will be waived, if there be no objection. The amendments of the committee will be stated.

The first amendment of the Committee on Public Buildings and Grounds was, after the word "Treasury," in line 3, to insert "or any other officer of the Government;" in line 4, after the word "procure," to strike out "a site" and insert "real estate;" in line 5, after the word "building," to insert the word "or;" in the same line, after the word "for," to insert "other;" in the same line, to strike out the word "Government" and insert "public;" in line 10, to strike out the word "site" and insert "real estate;" and in line 14, after the word "act," to insert the words "or such other officer;" so as to read:

"That in every case in which the Secretary of the Treasury, or any other officer of the Government, has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses, he shall be, and hereby is, authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the United States circuit or district courts of the

district wherein such real estate is located shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney-General of the United States, upon every application of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the Department of Justice."

The amendment was agreed to.

Mr. MANDERSON. I understand that the bill in its original text simply provides for the condemnation of property by the Secretary of the Treasury that is to be used for court-houses, post-offices, etc.

The PRESIDENT *pro tempore*. Does the Senator from Nebraska desire to interfere with action on the amendments of the committee?

Mr. MANDERSON. No, sir; but simply to ask as to their character. It certainly would be desirable that the provisions of the bill should extend to other Departments, so that in the event that land may be taken for fortifications or for military posts condemnation as to such lands may also be had. I should like to ask the Senator from Wisconsin whether these amendments have that in view.

Mr. SPOONER. The Senator from Nebraska is correct in his statement that the bill as it came from the House confers the right of condemnation simply for the purpose of acquiring lands for public buildings, and is confined to the Secretary of the Treasury. The amendments

read thus far proposed by the Committee on Public Lands extend the scope of the bill so as to bring any public officer within its provisions who is authorized by law to acquire property for any public use. It will embrace fortifications or any public use legally justifying the exercise of the power of eminent domain.

The next amendment, which will be read at the desk, is one which simply provides that the proceedings in the Federal courts shall conform, as is now the law as to actions at law generally throughout the country, to the practice and proceedings and methods in similar actions in the courts of the States for the time being within which the Federal court is located.

Mr. McPHERSON. I should like to ask the Senator who has charge of this bill a question for information. We have in the State of New Jersey two cases, I think, where it seems there was an omission in passing the bills in Congress to give the power of condemnation because it was not deemed necessary. It has been found to be necessary. There were bills passed at the present session of Congress in both cases. This bill, I presume, could not be retroactive sufficiently to cover those cases, and I wanted to inquire if there was in the amendments the committee has reported anything that would cover cases of that kind, where the purchases have not been made and the buildings have not been commenced.

Mr. SPOONER. I will say to the Senator from New Jersey that *this bill will cover all cases where it is desirable to acquire land for public*

uses, no matter when the authority was conferred by Congress.

Mr. McPHERSON. This, then, is a general act?

Mr. SPOONER. *It is a general act.*

Mr. McPHERSON. *It will make unnecessary in the future any power of condemnation being specially provided in such bills.*

Mr. SPOONER. *Undoubtedly.*

The PRESIDENT *pro tempore*. The next amendment of the committee will be stated.

The CHIEF CLERK. It is proposed to add to the bill as a new section the following:

"SEC. 2. The practice, pleadings, forms, and mode of proceeding in causes arising under the provisions of this act shall conform, as near as may be, to the practice, pleadings, forms, and proceedings existing at the time in like causes in courts of record in the States within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding."

The amendment was agreed to.

Mr. SPOONER. To answer an inquiry which has just been addressed to me by the Senator from Nebraska (Mr. Manderson), and to bring the fact to the attention of other Senators, I will say that this bill is drawn so as to bring it within the scope of the decision of the Supreme Court of the United States in the case of Kohl and others *v.* The United States, found in 1 Otto, page 367.

The bill was reported to the Senate as amended, and the amendments were concurred in.

> The amendments were ordered to be engrossed, and the bill to be read a third time.
>
> The bill was read the third time, and passed.
>
> The title was amended so as to read: "A bill to authorize condemnation of land for sites of public buildings, and for other purposes."

Thus the history of the Act of 1888, as well as its broad language, shows that Congress intended that it should not be necessary thereafter to grant specific power to condemn property in addition to authority to acquire it; and there is nothing in the language of the statute of 1912 relating to the Hanson Canal which deprives the Secretary of War of this power to condemn property whose acquisition has been authorized by Congress.

The naming of a specific price at which the Secretary of War was authorized to procure the property did not preclude condemnation proceedings.

Reading the two acts together it is obvious that Congress intended to authorize the Secretary of War to procure the property at a voluntary sale if he could procure it for not more than sixty-five thousand dollars and in the alternative to procure it by condemnation proceedings. No inconsistency is shown in providing alternative methods of acquisition.

Nor is the naming of a definite price beyond which the Secretary of War might not go inconsistent with judicial power under condemnation proceedings. Of course, in the present case the question which the

company is attempting to raise is an abstract question, for the amount which the jury found to be due to the company was no greater than the amount which Congress had authorized the Secretary of War to pay as a maximum sum. But even if the contention of the company could not be thus answered it is clear that the fixing of a definite limit beyond which payment might not be made without further authority from Congress does not constitute an exercise by Congress of judicial power. Congress has simply limited the power of executive officers and not the power of courts and juries. Any amount which seems proper to the court and to the jury may be awarded in the condemnation proceeding, and the Government may not constitutionally take the property until payment of that award has been made or provided for. The decision of the court is unfettered and is binding upon the parties as to the extent of their respective rights.

Congress has simply said that the Secretary of War may procure the property at not more than a specified sum, or, in the alternative, may submit the question of the value of the property to judicial determination.

The question as to the value of the company's property was submitted to the jury and full power was given to them to find for the company in any amount. The court said (R. 163):

> Now you are not bound by the $65,000 that they agreed to; if you think they ought to get more than that, why you can award them

more than that. If you think they ought to get less than that, you can award them less. * * *

What you must endeavor to ascertain is the present actual damages that they would suffer, the damages, the compensation, that the Government ought to pay for the taking over of this canal to be used by the public in connection with themselves and everybody else. * * *

You must resolve the facts, find what they are, find the value and fix it.

The Circuit Court of Appeals said (R. 185):

The contention of plaintiff in error that the Act of 1912 undertakes to value such property so as to invade the judicial power can not be sustained.

It is true that it appropriates only a certain sum which the Secretary can expend without further appropriation. But as the court properly charged the jury this did not fix the value of the property sought to be condemned, and that they should find a greater or less sum as the evidence might satisfy them as to the value.

The Circuit Court of Appeals then quoted the following passage from the opinion in *Shoemaker* v. *United States*, 147 U. S. 282, 302:

The validity of the law is further challenged because the aggregate amount to be expended in the purchase of land for the park is limited to the amount of $1,200,000. It is said that this is equivalent to condemning the lands

and fixing their value by arbitrary enactment. But a glance at the act shows that the property holders are not affected by the limitation. The value of the lands is to be agreed upon, or in the absence of agreement, is to be found by appraisers to be appointed by the court. The intention expressed by Congress, not to go beyond a certain aggregate expenditure, can not be deemed a direction to the appraisers to keep within any given limit in valuing any particular piece of property. *It is not unusual for Congress, in making appropriations for the erection of public buildings, including the purchase of sites, to name a sum beyond which expenditure shall not be made, but nobody ever thought that such a limitation had anything to do with what the owners of property should have a right to receive in case proceedings to condemn had to be resorted to.*

JAMES M. BECK,
Solicitor General.

ROBERT P. REEDER,
Special Assistant to the Attorney General.

FEBRUARY, 1923.

O

Supreme Court of the United States.

OCTOBER TERM, 1922.

ALBERT HANSON LUMBER COMPANY, LTD.,
PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

SUPPLEMENTAL AND REPLY BRIEF FOR ALBERT HANSON LUMBER COMPANY, LTD., PLAINTIFF IN ERROR.

An alleged promise to convey cannot form an independent ground for condemnation, particularly where there is no legislative authority to acquire land other than by gift outside the limits of the Hanson Canal—Specification of Error, No. 2.

To support the verdict for the statutory price, opposing counsel lay stress upon the Company's resolutions of 1913. By its terms, it, and likewise the Government, recognized that the Act of 1912 made no provision for the acquisition of lands except by gift beyond the boundaries of the Canal; and it fur-

ther provides for "free access, ingress and egress to and from the said Hanson Canal, *through the lateral canals* now constructed and used by the Albert Hanson Lumber Company, Limited, in its timber operations and lumber business and for all such commercial purposes as the said lateral canals may be used for hereafter, even after the Hanson Canal shall have been converted into a public inland waterway," etc. And the uncontradicted testimony of Vice-President Lawless and Kemper in corroboration of the portion of the resolution proposing to convey or "donate" the 300-foot strip in consideration of widening the Canal, is, that there was a definite understanding with Col. Beach that the Canal be widened 100 feet and 9 feet depth (R., pp. 101, 102, 103, 104, 106, 107, Testimony of Kemper R., p. 74). Maj. Dent, Col. Beach's successor, testifies that he, acting for the Government, would not be bound by the foregoing understandings. Alarmed at what the Company considered a breach of faith and in an endeavor to save itself from the resulting and impending destruction of its entire business, the Company tried to obtain certain rights of way to build another Canal and which depended upon the outcome of a local election. Being defeated at that election, nothing was left but to resist these proceedings.

As the proceeding to condemn is an action at law, right or wrong, neither the Government nor the defendant ought to be permitted to stand on any equity, real or supposed, as authority to condemn lands outside the boundaries of the Hanson Canal. That the jury did not rest its verdict on the resolutions or negotiations is shown by the verdict itself,

which reserved none of the stipulations or benefits accruing to the Company under the resolutions. They found for the statutory price for the Canal and included the lands outside the Canal because the intracoastal waterway legislation provided for their being furnished free of cost to the United States. But whether, over our objections and motion to strike out, the jury resolved themselves into Chancellors by decreeing in effect a specific performance of the resolutions freed from its benefits accruing to the Company or rested their verdict on the statutory price notwithstanding the uncontradicted value or cost of reproduction of $152,000.00 of the Canal, has nothing to do with this proposition as to the authority to condemn these lands outside the limits of the Canal and which has been or seems to be industriously unnoticed by the opposition and by the lower courts, save in the first opinion of the Court of Appeals—For, pray, where and what is the authority to acquire these lands?

By its own pleading, the Government has judicially confessed that the exercise of the right to condemn the lands outside the forty-foot boundary of the Canal springs, *not from any Act of Congress,* but from an equity arising out of the Company's resolution or in the negotiations of purchase. And in the opinion of the Court of Appeals herein sought to be reversed, it starts out with the statement that the proceeding is "to condemn a described strip of land 300 feet wide which embraced a waterway known as the Hanson Canal." But this consists in the cumulation of two distinct causes of action, one grounded on the Act of 1912 as claimed authority to condemn the so-called Hanson Canal proper, the other ground-

ed either on an asserted agreement of purchase under the Company's resolution or some other Act of Congress (not shown) as claimed authority to condemn the Company's lands outside the boundaries of the Canal—Such are the distinct issues. The last opinion of the Court of Appeal, indeed the District Judge, confounds these issues on the assumption, *sub silentio,* that the authority to purchase the Hanson Canal carried with it an authority to condemn not merely the Hanson Canal but *in addition* the Company's lands beyond the limits of the waterway. Our motion to strike out (R., p. 9) and Bills of Exceptions Nos. 2, 3 and 6 (R., pp. 36, 38, 39, 40, 43, 45) covered the issue as to the Company's resolution as claimed authority for specific performance triable only in a Court of Equity and because this resolution could not operate as a ground for condemnation of lands outside the limits of the Canal.

As to any legislative authority for the condemnation of any lands outside the boundaries of the Canal, none has been or could legally be pointed out. To the contrary, as argued in our original brief at pages 51 to 58, *these lands were not to be paid for by the United States,* and as the exercise of the power to condemn necessarily implies just compensation to be paid the owner, and as this acquisition by donation or free of cost to the United States depended upon a voluntary act of the owner or some one other than the United States, and as the authority to condemn even under the Act of Aug. 1888, is dependent upon an authority to procure, the Secretary of War was authorized neither to procure nor to condemn in the manner attempted. And finally, if it could be said that an authority to accept a gift, or to acquire

free of cost to the United States, constitutes an authority to procure then, reading the Acts of 1907, 1909, 1911, 1912, and the House Documents made part of them together as laws in *pari materia*, you get a legislative declaration of a rule for computing the compensation in that the judiciary must not take into account the value of lands outside the Canal limits which may be required for widening to the extent of 260 feet by 4 miles, although nothing is said in the Act of 1912 about widening, and thus the case is brought squarely within the interdiction announced in Monongahela Nav. Co. vs. United States, 148 U. S., p. 327 and kindred decisions therein approved. In addition to the cases cited in our original brief, the following decisions of the lower Federal courts are in accord with this Specification of Error No. 2.

In re Montgomery 48 Fed. Rep., 896; *In re* Manderson 51 Fed. Rep., 501, 2 C. C. A., 490; United States vs. Rauers 70 Fed. Rep., 748; United States vs. Certain Lands 70 Fed. Rep., 940—all holding that the Act of Aug. 1, 1888, has no application to special legislation authorizing the acquisition of real estate by gift or free of cost to the United States.

Views of members of a legislative body expressed in debate are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body.

It is said the history of the Act of 1888 shows that Congress intended full effect should be given to its sweeping terms (opposing brief, pp. 13 to 18). Whilst its history from introduction to final passage may be an aid to construction, the views of

members expressed in debate or on the floor, or the motives of individual members in voting for or against it, are not. This rule and the reason for it is shown by United States vs. Trans-Missouri Freight Asso. 166 U. S. at page 318 and cases there cited. So the discussion referred to in opposing brief is out of place. However, we concede that the history shown covers the acquisition of lands for public uses and we are therefore constrained to abandon the point on the application of the *ejusdun generis* rule contained in our original brief on page 28 to the middle of page 29, but no further.

United States vs. Graham & Irvine, 250 Fed., 499, 510, 502, and United States vs. Beatty, 198 Fed., 284, cited by opponents, are not opposed to but confirm our position on Specification of Error, No. 1.

In quoting the first two sentences from page 502 of U. S. vs. Graham & Irvine, 250 Fed., 499, 502, on page 13 of opposing brief, counsel omitted to quote the remaining three sentences of the paragraph which undoubtedly qualifies what precedes, thus:

> "And indeed, because of the provisions of the Act of 1888, it seems to me impossible to hold that the Act of 1911 shows an implied intent to repeal the Act of 1888 as to lands to be acquired under the Act of 1911. If such intent had existed, no such words as 'acquirement' and 'acquisition' would have been used in the Act of 1911. *On the other hand, the language would have been 'purchase by voluntary sale,' or words of similar import.*"

In United States vs. Beatty, 198 Fed., 284, where

the words of the statute were "for the purchase of land" and nothing more, opposing counsel again on page 12 of their brief omit quoting from the entire paragraph, for Judge McDowell seems to concur in our view, thusly:

> "To construe the word (purchase) here to mean only acquisition by buying, we must assume that Congress had in mind the method of acquisition rather than the general purpose to acquire."

In these two cases relied on by opponents, the context forbade a construction of the word "purchase" to mean a contract of purchase but indicated a technical purchase, including any method of acquisition other than by descent. In the Act of 1912, all the essentials of a contract of purchase or purchase by voluntary sale at a fixed price being present, the technical meaning is rejected and the exclusive method prescribed obtains.

Shoemaker vs. United States, 147 U. S., 282, 302, distinguished under Specification of Error No. 1.

In the Shoemaker case, there were 84 separate parcels of land belonging to 84 different owners, the aggregate amount to be expended in the purchase of land for the park being limited to $1,200,000. This limitation, is was said, "cannot be deemed a direction to the appraisers to keep within any given limit in valuing any particular piece of property." There, no particular piece of the 84 parcels of land was

selected by Congress to be purchased or condemned at a given sum, and so the aggregate appropriation for the 84 parcels did not fix the value for any one of them. But here, Congress, and not the Secretary of War, has selected a solitary inseparable waterway belonging to a single proprietor, to be acquired at not less than a fixed sum. So, assuming, *arguendo,* the application of the Act of 1888 to navigable waterways which we deny, the price limitation is necessarily attached to the alleged alternative method, for why did Congress fix a price or value if it had an intention of acquiring by any method at any price. Had the Jury ignored the price so fixed and found for the undisputed *real* value of $152,000, the faith and purse of the Government not being pledged to pay the award, the cloud thus resting on the Company's title combined with a precarious possession under such a decree, would be tantamount to confiscation and untold damage and injury, until and unless Congress deemed it fit to alter its original intention by special act. So we get back to the proposition that the Act of 1888 applies to cases where by special legislation Congress had in mind no price limitation for acquiring a particular undivided piece of real estate for a public use. On the other hand, the delegated powers to the officer can only be in execution of an Act of Congress. The whole legislation discloses no intention on the part of Congress to authorize condemnation, for even "an act done under color of authority and ostensibly in the exercise of discretion may be so clearly in excess of authority, or in abuse of authority as to require the courts to declare it to be such and therefore of no

effect." See Sutton vs. United States, 256, U. S., 575. Church of Holy Trinity v. U.S. 143 U.S. 457.

Respectfully submitted,

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Albert Hanson Lumber Company, Limited.

ALBERT HANSON LUMBER COMPANY, LTD., v. UNITED STATES.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 300. Argued February 28, March 1, 1923.—Decided April 9, 1923.

1. Authority from Congress to condemn a particular canal for use as part of a specified waterway, includes by implication so much land on either side as is essential to that purpose. P. 584.
2. The Secretary of War, having been authorized to purchase the Hanson Canal for use as part of the intracoastal waterway project (Act of July 25, 1912, c. 253, 37 Stat. 212), could acquire it by condemnation, under the general authority given government officers by the Act of August 1, 1888, c. 728, 25 Stat. 357, so to proceed when authorized to procure real estate for the erection of a public building or for other public uses. P. 585.
3. The Act of April 24, 1888, c. 194, 25 Stat. 94, authorizing the Secretary of War to acquire by condemnation land, etc., needed to enable him to maintain, operate or prosecute works for the improvement of rivers and harbors, does not operate to exclude the field to which it relates from the purview of the Act of August 1, 1888, *supra*. *Id*.
4. The fact that an act authorizing purchase of specific property limits the price to be paid, does not preclude resort to condemnation under a general statutory authority to proceed in that way, subject to the owner's constitutional right to have just compensation judicially ascertained and paid before his title passes and to retain his right to possession until reasonable, certain and adequate provision has been made for obtaining just compensation. P. 586.
5. In a proceeding by the United States to condemn a canal with land on each side,—*Held:*

(a) That resolutions of the board of directors of the corporate owner, reciting the necessity for the taking and an agreement with

the United States for a sale at a specified price and authorizing a conveyance, with certain reservations, upon payment of that sum, were not privileged, as an attempt to compromise, but admissions, admissible as evidence of the Government's right to take, decided by the court, and of the value of the property, decided by the jury. P. 588.

(*b*) That instructions that the jury should consider the original cost of the canal, the cost of reproducing it, and the reasons of the owner for contracting to sell it at a certain price, but might find a greater or less amount,—were unobjectionable. P. 589.

(*c*) That evidence of the original cost, of a much larger reproduction cost, and of the size, suitability for use, and condition of the canal, sustained a verdict for the amount of the original cost. *Id.*

277 Fed. 894, affirmed.

ERROR to a judgment of the Circuit Court of Appeals which affirmed a judgment of the District Court in a condemnation case.

Mr. E. Howard McCaleb, with whom *Mr. Emmet Alpha* was on the briefs, for plaintiff in error.

Mr. Alfred A. Wheat, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* and *Mr. Robert P. Reeder*, Special Assistant to the Attorney General, were on the brief, for the United States.

MR. JUSTICE BUTLER delivered the opinion of the Court.

The United States instituted condemnation proceedings in the District Court for the Eastern District of Louisiana to acquire the so-called Hanson Canal and a strip of land three hundred feet wide including the canal. Plaintiff in error was the owner and objected to the taking on grounds hereinafter stated. Judgment was given condemning the property and vesting title in the United States when the amount found in favor of the owner shall have been paid. The case was taken by the owner to the Circuit Court of

Appeals, and there the judgment was affirmed. The case is here on writ of error to that court.

The owner contends that the District Court and Circuit Court of Appeals erred in holding that the acts of Congress relied upon by the Government confer authority to condemn the canal proper and the land adjacent to and outside the limits thereof within a strip of a total width of three hundred feet inclusive of the canal.

The property is sought to be taken to constitute a part of the intracoastal canal projected by the Government extending from Boston to the Rio Grande. A number of acts of Congress[1] must be considered. Prior to the Act

[1]Act approved March 2, 1907, c. 2509, 34 Stat. 1089, makes appropriation for: "Improving Inland Waterway Channel from Franklin to Mermentau, Louisiana, . . ."

Act approved March 3, 1909, c. 264, 35 Stat. 815, 816, provides: "That appropriations or authorizations for appropriations heretofore made may . . . be diverted or applied upon modified projects for the rivers and harbors hereinafter named, as follows: . . .

"Inland waterway between Franklin and Mermentau, Louisiana: To secure a suitable right of way for the proposed inland waterway channel from Franklin to Mermentau, adopted by Congress in the river and harbor Act of March second, nineteen hundred and seven, the location of the eastern terminus of said channel may be changed from the town of Franklin, on Bayou Teche, to such other point on said bayou as the Secretary of War may select: *Provided*, That the modification herein authorized shall not be made unless a valid title to the necessary right of way be secured to the United States free of cost."

Act approved February 27, 1911, c. 166, 36 Stat. 942, 943, makes appropriation for: "Inland waterway between Franklin and Mermentau, Louisiana: To insure the selection of the most suitable route for the inland waterway channel from Franklin to Mermentau adopted by Congress in the river and harbor act of March second, nineteen hundred and seven, the Secretary of War is hereby authorized, on the recommendation of the Chief of Engineers, to make such changes in the location of said channel as may be considered desirable: *Provided*, That no change shall be made under this authorization unless the necessary right of way is secured to the United States free of cost."

approved July 25, 1912, it was contemplated that the right of way necessary for the enterprise would be secured to the United States free of cost. That act authorized the Secretary of War to purchase the Hanson Canal for use as a part of the waterway from Franklin to Mermentau, Louisiana, included in the intracoastal project, at a cost not to exceed $65,000. September 29, 1913, the board of directors of the owning company adopted resolutions which referred to the pertinent provisions of the Acts of Congress respectively approved March 2, 1907, and July 25, 1912, and recited that "it is necessary for the United States to have and own a right of way three hundred feet in width in order to improve and enlarge said canal and make the same a part of the said Inland Waterway;" that the United States has proposed and agreed to purchase the canal, including a three hundred feet wide strip of right of way and certain locks and other constructions thereon, and authorized and empowered the vice president who was the chief executive officer of the corporation, upon the payment of $65,000 as compensation, to convey the property to the United States.

These resolutions and the other circumstances disclosed by the record make it sufficiently clear that the land on either side of the canal is essential to the enterprise. It

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Act approved July 25, 1912, c. 253, 37 Stat. 201–212.

Act approved April 24, 1888, c. 194, 25 Stat. 94—an act to facilitate the prosecution of works projected for the improvement of rivers and harbors—provides: "That the Secretary of War may cause proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement by condemnation of any land, right of way, or material needed to enable him to maintain, operate or prosecute works for the improvement of rivers and harbors for which provision has been made by law; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: . . ."

Act approved August 1, 1888, c. 728, 25 Stat. 357.

follows that if the condemnation of the canal proper is authorized, the land may also be taken.

For authority to condemn, the United States relies on the Acts of July 25, 1912, and August 1, 1888. The pertinent provisions are:

"Improving waterway from Franklin to Mermentau, Louisiana: The Secretary of War is hereby authorized to purchase, for use as a part of said waterway, the so-called Hanson Canal . . . at a cost not to exceed $65,000, . . ." (c. 253, 37 Stat. 212.)

"That in every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be, and hereby is, authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, . . ." and jurisdiction is conferred upon the District Courts of proceedings for such condemnation, and the practice, pleadings, forms and proceedings are made to conform as near as may be to those existing in like cases in the courts of the State within which such District Courts are held (c. 728, 25 Stat. 357.)

Plaintiff in error argues that the Act of April 24, 1888, cited in the margin, conferring power upon the Secretary of War to condemn land, right of way and material needed to enable him to carry on work in connection with improvement of rivers and harbors, is exclusive and evidences an intention that the Act of August 1, 1888, shall not apply in that field, and that the Acts of 1907, 1909, 1911, and 1912, engraft an exception on the Act of April 24, 1888, to the effect that, as to the Hanson Canal property here sought to be taken, no power to condemn exists, and that it must be acquired, if at all, by contract of purchase at a price not in excess of the sum specified. It is

true that the authority granted by the Act of August 1, 1888, to some extent overlaps that granted by the earlier statute, (April 24, 1888) but there is no conflict between them. The earlier does not operate to limit the effect of the later act. The Act of 1912 specifically authorizes the purchase of the property because deemed necessary for public use. It would have been futile to authorize the purchase of an essential part of a great project, withholding power to condemn, and so leave it within the power of the owner to defeat the program by demanding a price in excess of $65,000 or by refusing to sell at all. The argument is without force.

Another contention of plaintiff in error is that the provision of the Act of July 25, 1912, limiting the authorized purchase price to $65,000, negatives and necessarily excludes authority to condemn. This is not a case where attempt is made by legislation to fix or limit the just compensation to be paid for private property condemned. It is not like *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, where Congress sought to exclude the value of the owner's franchise right to exact tolls for service performed, thereby violating the Fifth Amendment. The provision authorizing the Secretary to purchase at a cost not to exceed a specified amount has nothing to do with the judicial ascertainment of just compensation for the property condemned. *Shoemaker* v. *United States*, 147 U. S. 282, 302. Neither the right of the owner to be put in as good position pecuniarily as he would have been if his property had not been taken,[2] nor the right to have ascertainment and payment of just compensation as a condition of the taking,[3] is attempted to be impaired by

[2] *Seaboard Air Line Ry. Co.* v. *United States, ante*, 299, and cases there cited.

[3] *United States* v. *Jones*, 109 U. S. 513, 518; *Searl* v. *School District, Lake County*, 133 U. S. 553, 562; *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312, 337; *United States* v. *Sargent*, 162 Fed. 81, 83.

legislation here under consideration. It is not necessary that the exact amount required shall be appropriated or that legislation shall indicate no limit upon the expenditure for property to be taken. There is no declaration or evidence of legislative purpose to violate the just compensation clause or to secure the property in question for less than the full amount to which the owner was entitled.[4] The power of eminent domain is not dependent upon any specific grant; it is an attribute of sovereignty, limited and conditioned by the just compensation clause of the Fifth Amendment. The owner is protected by the rule that title does not pass until compensation has been ascertained and paid, nor a right to the possession until reasonable, certain and adequate provision is made for obtaining just compensation. *Cherokee Nation* v. *Southern Kansas Ry. Co.*, 135 U. S. 641, 659; *Bauman* v. *Ross*, 167 U. S. 548, 598, 599; *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 568, 569; *United States* v. *Jones*, 109 U. S. 513, 518; *Boom Co.* v. *Patterson*, 98 U. S. 403, 406.[5] The authority to condemn is not negatived or affected by the limit set upon cost in the authorization of the Secretary to purchase.

The Acts of July 25, 1912, and of August 1, 1888, make it obvious that the Secretary of War was authorized to acquire the property by purchase or condemnation. The authority to condemn conferred by the last mentioned act extends to every case in which an officer of the Government is authorized to procure real estate for public uses. See *United States* v. *Beaty*, 198 Fed. 284 (reviewed in 203 Fed. 620, but not overruled on this point, and writ of error dismissed in 232 U. S. 463); *United States* v. *Graham & Irvine*, 250 Fed. 499.[6]

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[4] *In re Manderson*, 51 Fed. 501.

[5] Cf. *In re Military Training Camp*, 260 Fed. 986, 990; Act of July 2, 1917, c. 35, 40 Stat. 241.

[6] For legislative history of the act, see 19 Cong. Rec. part 2, p. 1387; part 7, pp. 6401, 6505.

Plaintiff in error contends that the court erred in receiving in evidence the resolutions of the directors, in giving to the jury the instructions following:

"Coming to consider the value. You have heard what it cost to dig, what it would cost to dig it now, this contract that they made to sell it, and the reasons that induced them to make the contract. All that evidence you will consider. . . .

"Now you are not bound by the $65,000 that they agreed to; if you think they ought to get more than that, why you can award them more than that. If you think they ought to get less than that, you can award them less."

and also in holding that the verdict is supported by the evidence.

There were two principal issues of fact: (1) the necessity of taking the strip of land three hundred feet wide, inclusive of the canal, and (2) the amount of compensation to which the owner was entitled.

The resolutions hereinbefore mentioned stated that it is necessary for the United States to have and own a right of way three hundred feet in width in order to improve and enlarge said canal and make the same a part of the said inland waterway, that the United States had agreed to purchase the property from the company for $65,000, and authorized the conveyance of the same to the United States upon payment of that sum, possession to be retained until the purchase price was actually paid, and the right to cut trees thereon for a specified time, and right of ingress and egress from lateral canals to be reserved.

Two grounds of objection are urged: (1) that the issue of necessity was cognizable in equity and that the court, sitting as a chancellor, should have determined the equity issue prior to the trial of the law issue, and (2) that the resolutions offered in evidence constitute, and tend

merely to prove, an attempt to compromise. The resolutions contained a distinct admission of fact that it was necessary to take the strip of land in question. This admission was made for the purpose of showing the right of the Secretary of War to purchase the property. They were admissible in evidence for that purpose. The judge rightly decided at the trial that the taking was for a public purpose and the Government had a right to take.

The only question submitted to the jury was the amount the owner was entitled to receive for the property. At the time of the adoption of the resolutions, condemnation proceedings had not been commenced; they were voluntarily adopted; the specified price was fixed with perfect freedom; they show a completed agreement of purchase and sale; and there is no reason why they should not be considered as the owner's admission of the then value of the property. The company had opportunity to and did introduce evidence in explanation of the circumstances attending the adoption and the fixing of the price therein. The court did not err in receiving the evidence on the question of fact submitted to the jury. *Seaboard Air Line Ry.* v. *Chamblin,* 108 Va. 42; *O'Malley* v. *Commonwealth,* 182 Mass. 196; *Montana Tonopah Mining Co.* v. *Dunlap,* 196 Fed. 612, 617; *Spring Valley Waterworks* v. *San Francisco,* 192 Fed. 137, 164; *City of Springfield* v. *Schmook,* 68 Mo. 394; *Froysell* v. *Lewelyn* (Eng.), 9 Price, 122; 147 Reprint, 41.

The court instructed the jury to consider what it did cost and what it would cost now to dig the canal, the reasons that induced the company to make the contract, and that in reaching a verdict they were not bound by the $65,000 agreed upon and might find an amount greater or less than that. The objections urged against the charge are not well founded.

The evidence tended to show that the original cost of the canal was $65,000, and that it would cost $152,000 to

reproduce it. There was evidence disclosing the size of the canal, and its suitability for use, together with the condition of the property. It cannot be said the verdict for $65,000 is without support. *Erie R. R. Co.* v. *Winter*, 143 U. S. 60, 75.

The judgment of the Circuit Court of Appeals is affirmed.